Richard Wood
U. 8. 139

INSTRUCTIONS FOR JURY-MEN, ON THE Commission of Sewers;

SHEWING

1. What they are to Surveigh and View.
2. What to Enquire and Present.
3. How.

DELIVERED

In a Charge to 3. several Juries, at a Session of Sewers, holden at *Spalding*, in the County of *Lincoln*.

To which is added,

Two other Charges;

The One concerning *Lovell's* Works.
The Other touching the River of *Glean*, in the said County.

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Roger L'Estrange.

D7.173

Gentlemen, You of these several Juries,

WHen I look upon you, & consider the persons, 1. To whom I am to speak: Some of you Men grown Gray in this imployment, and that know as much what belongs to it, as I can tell you: Or when I look upon others, 2. Before whom I am to speak, Gentlemen much better able to doe it than my self, I cannot but think some such thing may befall Me, as did that Philosopher of *Ephesus*, who most presumptuously undertook to instruct *Hannibal* in the Discipline of War: A Self-conceited man, bred up another way, and in studies of another Nature; yet out of 1. Arrogancy, and 2. Ignorance, would give *Hannibal* a Discipline in his own Art, wherein he was so famously eminent (I would spare it, without 1. Envy, and 2. Offence, To the 1. Li-

ving, and the 2. Dead) That for Valour and Wisdom, he was to be reckoned One, even amongst the Greatest Generals that ever appeared in the Head of an Army: And what I have to speak to you here, may prove as that he did there, not only Needless, but Absurd and ridiculous.

However, yet (under Favour of those that hear it) Give me leave, though not in a way, To 1. Instruct you in your Duty, as if I thought you Ignorant: No, nor yet To 2. Direct you, as if I thought you Unskilful, or Unexperienced; But only To 3. Remind, or Remember you of it.

You are here three several Juries, of 1. Surveigh, and 2. Inquiry: And for order and method I shall reduce all that I have to say to you, to Three general heads. First, I shall declare to you What you are to View, in order to your Surveigh. Secondly, What you are to Present in order to your Inquiry: And Thirdly, How you are to Present, so as to perfect both. These three, I conceive comprehend your whole Duty. The First tells you what you are to travel

vel and ride about, when you are gone from hence. The Second tells you what you are to do, when you come hither again. The Third tells you in what manner you are to do it; of these with as much clearness and shortness as I may.

For the First, what you are to View. I do take it, they are all such things as are properly within the defence of the Laws of Sewers, and do concern, either 1. Navigation, or 2. Drayning, or 3. common Land-passage in such Maritime Countries as this is. 1. What to View.

First then, One great end of your View and Enquiry, is to preserve Navigation; that is, according to the common use of the Word in matters of Sewers, all manner of passage by water; and this doth not only 1. employ the Merchant, and many more under him, and make him to abound; but it also 2. enriches the Common Treasury by Customes, and 3. upholds the general Trade and Traffique of the whole Nation; and is in a special manner advantagious to such Countries as this, that are adjacent to the Sea: for hereby, as you may Export many of your home-grow- *Navigation.* *N13*

ing Commodities, and ſell them abroad at the deareſt Rates, So ſuch as are Imported, and brought in 1. from forein Countries, or 2. from other Countries within your own, you buy them with the 1. firſt, and at the 2. cheapeſt; and other Upland-places cannot have them, but 1. from you, or 2. after you.

Now the Commiſſion of Sewers, in a matter of ſuch great import as this of Navigation, is very exact and careful, 1. Firſt, In reſpect of all kinds of Navigation, 1. Whether it be with Veſſels of the greateſt bulk, as Ships. 2. Or with Veſſels of the ſmalleſt kind, as Boats. 3. Or with Veſſels of a middle nature, as Ballingers; which many take to ſignifie certain kinds of Veſſels, immediately employed about the lading or unloading of Ships; in ſome of the greateſt Rivers of this Nation (as I am informed) there be ſome of the greater ſort of Veſſels, of this very name, and for this very uſe; and are freſh-water Veſſels, of the greateſt bulk, framed with Oares, and without Sails: I ſhall neither trouble my ſelf, nor you, about the Original of the Word: There be,

Of Ships, Boats, Ballingers.

be, would fetch it farr enough, from an *Hebrew* Radix; but if I should follow *Minsius* in this his Opinion, I should have a farther trouble to tell you who brought it hither; therefore I shall only, and plainly tell you, in the Commission, I take it to signifie the same with your *Navicule Actuarie* amongst the *Latines*, such as be the Ballingers, or Balasters, properly so called, we have already spoken of: As also your Barges, and your Keels, and all other kinds of your greater fresh-water Vessels, carrying Anchors in them; by the one they are distinguished from Ships, by the other from Boats. בלה

2. Secondly, In this Point of Navigation the Commission is very exact, in respect of all Waters that be in any manner Navigable; I mean in case they be so 1. of common right, (which being once spoken, I would have it understood in every part of my Discourse; for the Commission defends not any Navigation, nor any water-course, but the common water-course, and the common Navigation only) and then, whether it be in greater or in lesser Wa- *In Rivers, Streams, and other Floods.* NB

ters, in ſmoother or in rougher Currents; that is, in 1. Rivers, 2. Streams, or 3. other Floods, doubtleſs it is to be preſerved; and the Commiſſion doth in ſpecie, and in particular, nominate every one of them.

Drayning. The ſecond ſort of things you are to view, are ſuch as concern Drayning, and theſe be ſuch as directly preſerve your Country, and do immediately concern the very Being, both 1. of the Country, and 2. of you in it. Now theſe are of two ſorts, Firſt, ſuch as preſerve the Country from being Drowned, by keeping out the Waters. Secondly, ſuch as make the Country dry, by iſſuing out the Waters.

Thoſe Defences that preſerve the Country from being Drowned, by keeping out the Waters, the principal of them; and ſuch as are expreſly named in the Commiſſion, are 1. your Walls, and 2. your Banks; I ſhall not be overcurious in the diſtinguiſhing of them: ſuch as diſtinguiſh them in regard of the Materialls whereof they conſiſt, and will have a Bank to be only of Earth, and a Wall only of Stone, will hardly

Walls, and Banks.

derive

derive our *English* Wall, from the *Latine Vallum*; for, that that was usually of Earth, is out of all question. For my part, I conceive the difference to be rather in the manner of the Defence: So that if they be main Defences, both for height, and strength, and security; if they do, *Valla munire*, be of the like defence to the Country, that an Intrenchment is to an Army; I doe take them to be Walls, though made of Earth; such as your Sea-walls are, both in Fact, and in Name. 2. And all smaller, and weaker Defences, I take to be Banks.

Now your Walls, or your Banks, (it matters not much by which of these Names you usually call them, for they are both expresly in the Commission) are of three several sorts, or kinds. First, such as defend against the Rivers, and your other greater Sewers, and the fresh-waters therein Descending; and these have a two-fold benefit. 1. The one, in that they make a stream, and inchanel the waters, which makes very much to Navigation. 2. The other, in that they secure the Country, and preserve the same from Inundation,

1. *Rivers*
2. *Banks.*

which certainly makes as much to drain-
ing: and *Gent.* such may be the violence
of some of these Rivers, and that I may
speak with relation to our own particu-
lar concernments, that of *Welland* is
known to be such, that if it be not kept
within Banks, and the Banks thereof
strongly defended, some parts of this
Country will be in yearly danger of
being drowned, either Northernly,
as far as *Boston*, or Southernly, as
far as *Sutton*, or Easterly, upon the
Towns that suffered under it this last
VVinter; even as the VVinds shall
chance to drive the VVaters, and the
Fens. And therefore I would have you
take so far notice of your danger, as
now, while you may, to prevent it;
and, by securing of these River-Banks,
to secure your Country.

Fen-Banks.

2. Secondly, other Banks there be
that are main Defences against the Fens,
and that vast Body of waters, usually
lying upon that Level: These you com-
monly call your outring Banks, and they
have always been esteemed as the main
defence and security of your several
Townships; Some of you, of some of
these

these Juries, I am sure have reason to look upon them as such; and with what Eyes and Hearts you lately beheld and felt your own danger and damage, and it might have been your utter Destruction, even from hence, many of you cannot but remember now; And this I am sure of, Wets and Winds may come again.

3. Thirdly, other Banks there be, that are main defences against the Sea, that raging Enemy: But because by the imbanking of the Marshes, there is at present, a handsome anticipation as to you in this Country, and other persons, and their Estates, lie between you and the charge, and before you and the danger, so that the Sea cannot much hurt you, before it destroy them: Therefore I shall not speak much to you about these Banks, only I would have you see to them so far, that they be not 1. weakned, or 2. demolished, nor for any private Mans pleasure, profit or command whatsoever, 3. cut through, or 4. in any other manner made indefensable. These Banks, you know, are the common known defence of the whole *Sea-Banks.*

whole Country; and for the upholdi
of the other Marsh-Banks, there is
farther Obligation, than private Int
rest, and the meer will of the Owne
And truly considering what great Ba
teries the Sea, of late years, hath mad
upon them, & what strong assaults upo
the Country, I would not have the com
mon defence of the whole Country, al
together neglected, and regardlesly lef
upon other mens scores, only becaus
they are a little more immediately con
cerned in the danger, and are sure to b
drowned before us: And so I have
done with such defences as preserve th
Country from being drowned, by keep
ing out the waters.

Water-Courses. Secondly, Other things there be within the Defence of the Commission o Sewars, that make the Country dry, by issuing out the waters: and these are your VVater-gangs, or your common water-courses of all sorts, from the very Gutter, to the River; To give you particular notice of such as are particularly named in the Commission: There is,

Gutters. 1. First your Gutter, which is the sma!-

malleſt Chanel of water; And I have
en in ſome Up-land Towns, where
utters, and a common Ditch, or in o-
ers, a Brook, have been the only
ewars, and where they alone have
een ſufficient to avoid the whole miſ-
hief of that water: But where there
ave been no other Sewars but theſe,
ey have ſeldom come under the dire-
tion of a Commiſſion, the Court Leets
ave been ſufficient, and have ſerved
e turn to order them. 173

2. Secondly, Ditches, The Latines *Ditches.*
all them *Foſſæ*, *a Fodiendo*, as being
ade with the Spade; For, *Foſſa eſt re-*
ceptaculum Aquæ manu facta, ſaith *Ul-*
pian, and for any Grammarians pleaſure
dare not alter it; but he hath ſaid ſo
efore me, and I muſt crave leave to
ſe his words, and ſay ſo after him.

And though theſe Ditches conſiſt of
arger chanels than Gutters, yet I take
hem to have the ſmalleſt current of wa-
ers: Hence the Learned Reader, upon
he Statute of Sewars, calls them a cur-
ent of water, *in infimo gradu*, in the
oweſt degree imaginable.

Your Ditches in this Country, are,
for

or ought I know, of private uſe an
charge, and are not under the Directio
of the Commiſſion, further than, 1. A
they may relate to ſome general or com
mon Good, or 2. may be the cauſe o
ſome general or common Miſchief; bu
in the Countries above us there ar
ſome antient remains of theſe commo
Ditches, though for the preſent the
are moſt of them dry and deſerted; an
conſidering the little uſe that now i
made of them, I have heard ſome won
der, to what purpoſe they were at firſ
deviſed: For my own part, I doubt not
but that in antienter times they have
been of prime uſe, even in this very
reſpect of Drayning; but I take it
ſince ſuch Countries as this, that lye
between the Sea and them, have been
gained, and made uſefull, they have
been left as uſeleſs; and ſo much
concerning them. Other water-courſe
there be, that have both conſiderable
1. Chanells, and 2. Currents, and
are very beneficious and uſefull to you
in matter of Drayning, and they follow
in the Commiſſion, where

Trenches 3. Thirdly, You have Trenches; which

which for diſtinction from the reſt, I take to be currents of water, trenched deep, and ſunk within ſoyl; ſuch as have either 1. no banks raiſed above ſoyl, or 2. very ſmall ones, and thoſe rather raiſed by the cleanſing and purging of them, to give a ſwifter and readier paſſage to the waters, than to defend againſt them: Theſe are thoſe your *Latines* properly call *Incilia*, paſſages for water cut deep into the ſoyl; and they are the petty conveyances of any downfall of waters into your main Sewars.

Sewars.

4. Fourthly, Sewars; and they are to be accounted amongſt your grand Iſſuers of water; from whence I conceive they carry their name (*Sewars*, *quaſi Iſſuers.*) I ſhall take his opinion, who delivers them to be Currents of water, kept in on both ſides with banks; and in ſome ſenſe, they may be called, a certain kind of a little or ſmall River. But as for the derivation of the word Sewar, from two of our Engliſh words, Sea and Were, or as others will have it, Sea and Ward, give me leave, now I have mentioned

it

it, to leave it to your judgements. However this word, Sewar, is very famous amongst us, both for giving the Title to the Commission of Sewars it self, and for being the ordinary name of most of your common Water-courses, for Drayning in the Country; and therefore I presume, there are none of you, of these Juries, but both know 1. what your Sewars signifie, and also in particular 2. what they are; and of a thing so generally known, and of such general use, I shall use no more words to you, but that you have a special regard and care of them.

And thus much of your Water-courses, which relate only to Drayning, and have no living Fountains from whence they are fed, but are only Drains, and serve to discharge and carry off the surplusage of other waters; such other waters I mean, as either 1. have their immediate downfall from the Heavens amongst us, 2. or descend from Upland Countries to us, 3. or are the Over-flowings of Rivers and greater Streams upon us. Four kinds there are of them, as you have heard; two of them

them of private and particular charge and benefit only, as your 1. Gutters, and 2. your Ditches: other two of common and general charge and use, as 3. your Trenches, and 4. your Sewers. Now will you see, how they stand in order, and relate one to another? Take it briefly thus. Your 1. Gulters, they bring the waters from off your Grounds to your Ditches. 2. Your Ditches, they bring the waters down to your Trenches. 3. Your Trenches, they carry them out to your Sewers. And 4. your Sewers, they carry them away to the Sea. And of them thus much.

The remaining Water-Courses, mentioned in the Commission, are such as relate both to Drayning, and also to Navigation, and that in an Eminent Manner: And they are your Streams, and your Rivers.

5. Fifthly, Streams, I do take for such Currents of water, as have both a 1 Certain, and a 2 Constant Source from whence they Flow. You may make two sorts of them. First, such as do conveigh the water from the Fountain to the River: some of these, which do descend

Streams.

from greater Springs, are Navigable from the very head. As to give you an example of one that lyes within the charge of one of these Juries; and withall, to charge them, take special notice of it. *Burne-Ea* is such a Stream, and though this, as all other Streams of this nature, be Navigable but with Boats, that is with Vessels of the smallest size only, yet as I formerly told you, such Navigation is to be preserved. However these Streams are a great advancement to all Navigation; whereupon, the Author of the Readings upon the Statute of Sewars, no less truly than eloquently, calls the Springs from whence they Flow, the very Vital Spirits of all the Rivers in the Land. Secondly, other Streams there be, which have been devised to make a Navigable passage from one great River to another, call them Leams or Streams, it matters not much, as long as you signifie the same thing with me; and these very prudently have been devised, as helps to inlarge Navigation, and so farr only to be suffered, as they inlarge it, and better it: For where, 1. they either make Navigation

tion worse, by diverting the water; or 2. indanger the Country, by overflowing the Levell, they are, as I shall hereafter tell you, within the power and view of the Commission of Sewars indeed, but as impediments and annoyances, to be reformed, or removed, and in that case, are rather to be esteemed, Waters out of Course, than Water-Courses. And thus much concerning Streams, which I take to be sufficiently distinguished from all the former Water-Courses, in that they have a certain, and a constant Fountain or Source, from whence they Flow, which the other want.

6. The Sixth Water-Course named in the Commission, is a River, and this properly is made up of Streams, and is no other thing than many Streams incorporate into one, and so becomes Navigable to the Sea. Besides, that Rivers are greater waters than Streams, a River and a Stream, differ also in *Exitu*, that is, in their Outfall; for the Outfall of a Stream is commonly a River, but the common Outfall of a River is the Sea. Many are the benefits and advantages of *Rivers.*

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a River, even ſuch as be of private Concernment, wherein certainly, many particular Perſons may have good Right and Intereſt; and whereof, ſuch as in truth have ſo, further than as at ſome times they may croſs the main end of the Commiſſion of Sewers, ought not to be debarr'd the Injoyment, or limited in the Uſe. But I ſhall ſay no more of theſe, as being not compriſed within the Commiſſion; only I ſhall tell you, that ſuch there are, and that the Commiſſion of Sewers was not made, nor intended, to Deſtroy them, but only to Regulate them ſo as that particular Conveniencies might not become general Miſchiefs. But to come home to the Commiſſion from whence? and whither? Is it that your Ships ſayl? but 1. From, and 2. To your Ports, & your Havens? and they are nothing elſe but ſecure Harbors upon your Rivers. 1. Your Havens, Harbors for ſecurity only. 2. Your Ports (as the word is uſually here taken amongſt us in our Engliſh language) beſides that, places of 1. Privilege, and 2. Defence too; what is it, that your Boats, and Barges, and Balingers, and other Veſſels, have the com-

common paſſage? Is it not upon your Rivers? Theſe two for Navigation; but give me leave to ask you a third Queſtion, What is it that doth conduce ſo much to matter of Drayning, as your Rivers doe? Other Drayns you have, I confeſs; But your Rivers, 1. They are the grand conveyers of the water from the Fountain to the Sea, which they ought to bear down, 1. in their own Chanels, 2. and other adjacent receptacles, till they diſcharge it there: And ſo they carry away the miſchief, 1. of Springs wholly, and 2. of Land-waters alſo, as to the greateſt part of it.

Again, 2. The Rivers they keep open a Chanel or vent into the Sea, and ſo give an Outfall, both, 1. to their own waters, and 2. to all your other Drains too; without which, your Drains all of them would be uſeleſs; For you had as good have no Drain, as they to have no Outfall: So that I may well ſay, without Rivers, there would be neither 1. Navigation, nor 2. Draining to any purpoſe. Therefore, *Gentlemen*, It concerns you, to take ſpecial notice of your Rivers. There are ſome, four as

I take it, in the whole County, that be Navigable, and two of them are now under your view, the one of *Welland*, the other of *Gleane*: The one of these namely that of *Welland*, tis said, must drown all *Holland*, *Est adhuc in Fatis* and I pray God we in this careless Age see it not *in Facto*: An old saying it is, and loath I would be, that we in our dayes should conveigh the sad remembrance of the Truth of it to following Generations.

Floods. 7. Besides Rivers, there is in the Commission mention made of Floods; which doubtless, are 1. either Waters, 2. or Water-courses; and for my part, I take them to be nothing else but your greater Rivers; Both Flood and River, as to the words, have their derivation *a Fluendo*, the one in Greek, the other in Latine; and till I be better instructed, I shall hold with the Civilians, That, *Flumen à Rivo discernendum est, vel Magnitudine, vel circum-colentium existimatione*, That is, Floods are nothing else but your greatest Rivers, or those Rivers are Floods which have been accustomedly so called.

And

And falling here upon that thing we call common eſtimation, give me leave to tell you, That it may be, ſome words that I have hitherto explaned, and ſome others that I ſhall have occaſion to ſpeak hereafter, may not agree altogether with that uſual and accuſtomed ſenſe you have of them; and no wonder, for I have endeavoured to difference words, as they are uſed in the Commiſſion, and not as they are uſed in our common Language. Certain it is, 1. That every word is not throughly weighed before it be ſpoken, 2. Neither are any words uſed in full and exact propriety, So that the ſame word muſt of neceſſity have different ſignifications; ſometimes in a larger, ſometimes in a ſtricter ſenſe; even accordingly, as it is uſed. Now in this ambiguity of words, I think I have good reaſon to follow the Commiſſion, and to conceive a rational ſenſe and difference of them: 1. as they are, or 2. in likelyhood are there uſed, rather than to follow common Language, wherein I am ſure there is no word whatſoever, but what is commonly abuſed. And this is all I ſhall reply

to any who shall have a mind to play the Critick upon what I have spoken.

And thus I have done with your VVater-courses, and have brought down the waters, 1. from the Springs, by your Sreams and your Rivers to the Sea, and 2. from off your Lands, by your Drains to their Out-fall, where I find an Engine 1. of excellent, and 2. approved use in Draining, and finding it named in the Commission, I cannot handsomely overpass it, without taking some notice of it, and that is a Goat, or as you more commonly call it, a Sluce.

Goats. Hitherto we have spoken of VVater-courses, and that is, of water, *in decursu*, of water, in its descent, or current only: I have but one word more to speak of the water now, and that is, of the water *in exitu*, in its Out-fall. Your Drains they indeed bring the waters down, but your Goats they let them out; and are Instruments of Draining, so Artificially deviſed, that during the Ebbing of the Sea, they are always open to let out the Land-waters, and during the Flowing thereof they are always shut, to keep out the Salt and the Sea-waters.

Of

Of like uſe, with your Goats, and Flood-nces, are your Flood-gates; and as I nceive, ſo far as they are beneficial to ou in matter of Draining, are to be teemed parts of them, or at moſt, and here they are ſole, but imperfect mo-els and parcels of them. For if they e impediments to Navigation, or raining, they are then either to be e-eemed as Locks, or in a more peculiar anner, belong to the Water-Miller, f which more hereafter. And ſo I ave done with all thoſe things you are o view, which concerns, 1. either Na-igation, 2. or Draining. *gates.*

A third ſort of things you are to view *Land-*oo, which are within the defence of *paſſage.* he Commiſſion of Sewers, and they oncern common Land-paſſage, in ſuch Maritime Countries as this is: Theſe are uch as maintain a Way amongſt us; and hat, 1. either upon the Land, as your Calſey, or 2. over the Waters, as your Bridges; without both which this Coun-ry would be altogether unpaſſable, and would be a place both *Invius, & Avius,* without any paſſage, 1. in it, or 2. to t; cut off from the Up-land Countries

a-

above us, and cut in pieces amongst ou
selves. And as your works of Sewars
1. which relate to Draining, make the
Country habitable, 2. and Navigation
makes you maintain a Traffique, o
Trade, with other Countries, 3. so you
Bridges, and your Calseys, these make
an intercourse, and a way for Trade a-
mongst your selves within your own
Country here at home.

But before I proceed further, give
me leave to give you some account of
the Method I now proceed in; It may
be thought, and for mine own part, I
my self have had thoughts that way; that
although it be a thing altogether unde-
niable, that the words *Pontes & Calet-
ra*, that is, Bridges and Calseys, be ex-
pressly contained in all the Commissions
of Sewars that ever were yet in use, ei-
ther at Common-Law, or by Statute-
Law; yet that the Commissioners of
Sewars had no further to meddle about
them, than as things relating to Naviga-
tion, or Draining: Well let this be
granted, yet I take it to be a thing un-
deniable too, that they do conduce to
these ends; not only, 1. by defend-

ing

ng againſt the Waters, but alſo 2. by preſerving a paſſage over the Waters; and ſo preventing Fords, and ſuch like obſtructive and inconvenient Paſſages within them: and this benefit of common Land-Paſſage being the main end theſe Works were principally made and contrived for, I ſhall crave leave to propound them to you accordingly. ----

And yet further, in as antient Eſcripts of Sewars as ever came to my view, and are at this hour preſerved amongſt the Records of this Court, I do find, that Calſeys and Bridges have in the execution of the Commiſſion been taken notice of as common Land-Paſſages: Theſe antient Inquiſitions I have ſeen, the one without Date, the other taken *Nono Edwardi Secundi*, and the third *Quarto Henrici Quinti*. 1. VVherein concerning Calſeys I do find, that *Barwick* Calſey, in the Parts of *Keſteven*, was preſented upon *Great Hale*, Town there, and the Abbot of *Bardney* to be repaired and ſuſtained, *pro Hominibus Peditibus, & Equitibus*, that is, both for Foot-Paſſage, and for Horſe-Paſſage. And I alſo find, *Brigge-*

Dike

Dike Calſey Preſented, as *Regia ſtrata pro quibuſcunque Legeis Domini Regis de ſuper tranſitur is de Keſteven uſque ad partes de Hollande*: And the Decayes thereof to be, *in Magnum periculum plurimorum de Populo Domini Regis ſuper dictum calcetum tranſeuntium*: And this I take to be full enough, and ſufficiently to prove, that as Calſeys of themſelves are common Land-Paſſages, ſo that heretofore, the Commiſſioners of Sewers have taken Cognizance of them as ſuch. 2. And as for Bridges, I find them Preſented in the ſaid Inquiſitions not only in reſpect of the 1. Paſſage of the VVater, 2. or of Boats under them; but alſo in reſpect 3. of Land-Paſſage over them. Thus *Burton* Bridge, *cum Calcetis*, is Preſented to be, *Alta via, & Regia ſtrata*; and in ſuch manner to be repaired, *ita quod Homines Pedites & Equites ſecurè omni tempore poſſint tranſire*, ſo as to be a ſafe Paſſage for Horſe and Foot. And other Bridges are therein Preſented, to be repaired, not only to ſuch a breadth and depth, as 1. ſhall not *minuere Latitudinem Sewerarum, pro tranſitu aquæ celerius habenda;*

la; but also shall be 2. *pro sufficienti transitu Carectarum & Quadrigarum*, a sufficient Passage for Horse, Wagon, and Cart. --- And all this was done by virtue of the Commission of Sewers as it stood at the Common Law; and no man can say, but that the Extent of the Commission is much larger, and the Power of the Commissioners much greater now than then it was, as having received several Additions and Enlargements; but no Restraint in any thing, saving only the Commission is now to be executed by six Commissioners, when as then two would have served; nay, which I more wonder at, in the antient Inquisition, taken *Nono Edwardi secundi*, I find, the want of a Ferry-Boat at *Cathmouth*, or rather *Wathmouth*, Presented upon the Prior of *Haverholme*; and that, *Debet invenire ad ducendum Homines Pedites ultra aquam, tam nocti, quam diei.* --- So then, certain it is, that there are Presidents of Sewers, to warrant such Proceedings; the only Question is, How far the Commission of Sewers will warrant such Precedents; the Resolution whereof I shall willingly leave

leave to others: For my own part, I know not how to ſlight, much leſs out of any conceit of mine own, to cenſure and condemn Precedents of ſuch great Antiquity; And having ſpoken this to clear the Method I am to proceed in, I now proceed on.

Calſeys. 1. Firſt then, concerning your Calſeys, they are common Paſſage-wayes upon the Land, made of Stone, Sand, or Gravel: and they have their Name *A Calce*; the uſual Stone it ſhould ſeem, whereof moſt Calſeys have formerly been made. --- Theſe Calſeys we find expreſly within the Defence of the Commiſſion of Sewers, as now it is, and was Enacted in *Henry* the 8*ths* time. But look above that, to the Firſt Statute Commiſſion of Sewers in *Henry* the 6*ths* time, and there you find them likewiſe. Look higher above that, to to the Commiſſion of Sewers as it ſtood at the Common Law, and there you ſhall find them expreſly named too. Enough I think to prove that the Commiſſioners of Sewers have ſomething to do with ſome kind of Calſeys; and that, as they are things different both from

om Walls and Bridges. And was there
o other Provision for the maintaining
Calseys amongst us, and in such Mari-
ne, and Fenny, and Mooriſh Coun-
es as this is, devoid of Stone, and
ch like Materials, more than the or-
nary Proviſion for the maintaining of
e High-wayes, (I mean than the or-
nary Statutes?) they, all of them,
you experimentally know it) would
ver maintain any one Calſey amongſt
--- But I will not now undertake, to
l you in particular, what Calſeys are
thin the warrantable Defence of the
mmiſſion of Sewers; but having re-
ion to what I have formerly ſpoken,
ll only tell you, that all ſuch Cal-
ys as are either 1. a Defence, or
er, or Boundary againſt the Waters
any manner whatſoever; 2. Or are
ject to Decay by the continual Beat
d Rage of the Waters; 3. And have
retofore been under the View of the
mmiſſion, and here Preſented, are
t to be excluded your View and
re.

2. Secondly, Bridges. And they *Bridges.*
your common Paſſage-wayes over
your

your Rivers, and your other Drayns and Water-courſes. And doubtleſs, Bridges that have conſtant Currents VVater under them, are within t reach of this Commiſſion, and may virtue thereof be upheld and repaire 1. Not only thoſe Bridges that be publique uſe, and for common paſſag 2. but even private and particular Me Bridges too, if they be of publique B nefit: In like manner, as private Me Bridges may be pulled down, if th be fouud to be of publique Dam mage.

And thus I have done with the Fi Part of my Diſcourſe, and have, a cording to my weak Abilities, told yo VVhat thoſe Things are you ought View. --- And to bring them all into ſhort Recapitulation, they concern either Land-Paſſage, 2. or VVate Paſſage, 3. or the Paſſage of the VV ter it ſelf. So 1. as it may be kept wit in the bounds allotted to it, 2. and t Country defended againſt it.

But there is one thing more I not ſo much to ſpeak to you of it, as ſpeak againſt you for it. You are here

ſo many of every Jury, and it may be for ſhow ride together a day or two upon your View, and ſo poſt it over; but your main Information, whereupon you ground your Preſentments, you take it altogether upon truſt, from one or two ſuch as be impannelled amongſt you of every Town; this is to præcipitate your buſineſs: and all Præcipitations are commonly accompanied with Over-ſights, and they cauſe Miſtakes and Errours. Shall I tell you the Miſchief of this? I have obſerved it; 1. Every Town would have their Aſſeſſment as ſmall as might be, 2. and every Officer would have his years work as eaſie as might be; and ſo, when theſe are the Men that give the only Information to the Court, and are in a manner wholly intruſted with the View, and with the Preſentment, never any thing to Purpoſe hath been, nor likely is to be Preſented: But becauſe ſomething needs muſt, yet that, but 1. for Formality, and 2. Works of meer Neceſſity, and 3. as little as may be; ſo that let the Commiſſioners 1. Offer, or 2. Deſign, what they 1. may, or 2.

 can,

can; yet Jurors will 1. do, and 2. find no more, than 1. what, and 2. as they liſt. And no wonder, when Views and Preſentments have been ſo ſlenderly made, if that good have not come to the Country, by the Commiſſion, that ſome may have expected. --- For a full Remedy, I could wiſh that others, (the Commiſſioners I mean) who chiefly indeed ought to do it, would joyn with you in the View too; and ſo make 1. the View chiefly their Acts, as properly it ought to be: and the Enquiry yours. But becauſe that perhaps might be a thing of two great a Charge and Inconveniency, -- for the preſent, give me leave to tell you, it is your Duty, all of each Jury, to make your View together; and upon your View, to take full Information together, of what you ſhall think fit to Preſent, and not to leave that which is the main End you View for, to one or two of a Town only, and they likely enough to be partial in the buſineſs. And thus much 1. for what you are to View, and 2. for you that are to View it, that is, all of you together, that be of each ſeveral Jury.

And

And ſo I come to the Second Part of my Diſcourſe, to tell you, What you are to Preſent. And I do take it, they are all Tranſgreſſions againſt the Lawes of Sewers, of what kind ſoever they be. Now theſe, as all other Tranſgreſſions, are either 1. *Delicta*, or 2. *Commiſſa*; I can Engliſh, nor diſtinguiſh them no better, than in your uſual terms, 1. Defaults, or 2. Offences: 1. Defaults, when that is not done that ought; 2. Offences, when that is done that ought not. 2. *What to Preſent.*

Defaults, they are Amerceable only; and although a direct Act of the Will may be upon a bare Omiſſion, and a Man may make his Default wilfull; yet becauſe Defaults may alſo be of bare Neglect, *Sine Pravâ Diſpoſitione*, of Indiſpoſition only, without an evil Diſpoſition, therefore they are left *in Miſericordia*, to be ſet in the Mercy of you that are Jurors.

Offences, are moſt of them Fineable, as being alwayes willingly done; nay, many times, *Vi*, *&* *Armis*, with Force, and in full Contempt of the Authority that ſhould Regulate them;

and therefore, as being Crimes, and of a higher Nature, are subject to a higher Penalty, and to the Censure, and Discretion of the Court.

And truly *Gentlemen*, all these Defaults and Offences you are to View too, otherwise, how can you truly Inform the Court what they are? -- But 1. such things as be within the Defence of the Commission of Sewers, you are to View, so as to have them Preserved and Maintained: 2. these Defaults and Offences that be within the Correction of the Commission of Sewers, you are to View, so as to have them Remedied or Removed; so that the former are properly the subject of your View, these of your Presentment.

Defaults But to goe forward. I have heretofore told you, What things you are to View; now, without repeating any thing that I have formerly spoken, I am briefly to tell you, What Defaults in them you are to Present.

In Goats, or Flood-gates; in Calseys, & Bridges. 1. First, Your 1. Goats, or Sluces or Flood-gates; and 2. your Calseys and 3. your Bridges; they are to be 1 Upheld, and 2. Repaired: so that in

cas

caſe 1. they be 1. Lacerate, or 2. Broken, and want 1. Repairing, 2. or be Dirupt, that is, 1. Decayed, or 2. Ruined, and require 2. making of new, you are to make Preſentment of them accordingly.

2. Secondly, Your Water-courſes, all the ſorts of them, whether they be for 1. Navigation, 2. or Drayning, 3. or both, are, to purſue the words of the Commiſſion, to be 1. Cleanſed, and 2. Purged; and their Chanels maintained in their antient 1. Bredths, and 2. Depths: ſo that in caſe they, or any part of them, 1. be Foul, and want 1. Roading, 2. Hooking, or 3. other Cleanſing; 2. or be Landed up, and want 1. Ditching, or 2. Opening, you are to make your Preſentment accordingly. *In Water-courſes.*

3. Thirdly, and Laſtly, Your Walls, and your Banks, thoſe main Works of Sewers, that defend either 1. the whole Country, or 2. your ſeveral Townſhips, they are to be of 1. Heighth, 2. Bredth, and 3. Strength ſufficient to do it; ſo that in caſe you find them 1. Broken, with Gools in them, 2. or *In Walls, and Banks.*

otherwiſe, weak and deficient, for want of 1. Flagging, 2. Piling, or 3. Skirting; 3. or any wayes inſufficient, for want of 1. Heightening, or 2. Strengthening, you are to make particular Preſentment, according as the Default ſhall be. --- And truly *Gentlemen*, In ſuch Works as theſe, that are the immediate Defence of your Country, and Townſhips, you are to be carefull in your View and Enquiry; and to ſee, Firſt, Whether they be of their accuſtomed Heighth and Strength; and if they be not, ſuch Defaults to Preſent upon the Perſons that ought to maintain them ſo. Secondly, Whether they be of ſufficient Heighth and Strength, for ſuppoſe they be of their uſual and accuſtomed Heights, and upon ſome great Alterations, either in reſpect of the Sea it ſelf, or of other great Rivers or Streams, (whether they be 1. out of the Power, or 2. beyond the Authority of the Commiſſioners of Sewers, to help or redreſs) this will not defend the Country. I confeſs in this caſe there are no Perſons in default, that you can Preſent, unleſs ſome, that in ſome few par-

particular places may have covenanted for the Drayning of you: And such as these, if there be any such, are to do their Covenant: for in respect of them, not the accustomed greatness of their works, but the performance of the work they have undertaken, is to be looked at. But suppose, as to most of your defensive Banks, there be none such; in this case certainly, though there be no Default, yet a Defect there is, and you ought to certifie the Commissioners of it, and how much the said Banks ought of New to be exalted, to make sufficient Defence: And in such a dangerous Necessity, the Commissioners (as I conceive) ought not to sit still, & see the Country Drowned: you would all say, they were in Default, if they should do so; but they may, and ought to impose a new Charge for the doing of it upon the Level; the Persons there I mean, that be concerned in the hurt or loss: 'Tis clear, the Commissioners may Impose such a Charge by way of Reparations, for the making up of a Bank wherein was no Default, *post Damnum Acceptum*, in case of a sudden Breach; as upon Extra-

ordinary Floods and Winds, such Breaches often do happen; and if they might not Impose the like by way of Prevention, *ad Damnum Evitandum*, the Commission would be deficient in its main End, and would not sufficiently provide for the Preservation of the Country against the Waters; which, though it be not the only, yet it is the chief thing the Commission was made for; and by expres words thereof, Power is given to make Ordinances and Provisions, as well for safeguard and conservation, as for redres. -- And so much in particular concerning the Defaults you are to Present.

Offences in things of

Besides those Defaults, Secondly, Offences there be too, that you are to Enquire of, and Present, and they particularly mentioned in the Commission. 1. Some whereof are in things of general use, and at least are to be Reformed; 2. Others are in things of 1. general, or 2. particular abuse, and may be Destroyed.

1. General Use, as

1. First, To begin with those Offences that be in things of general use, they are either 1. in Bridges, or 2. in Streams,

reams, or 3. in Goats. The things emſelves are of general uſe, and we ave ſpoken of them before, as they be ithin the Defence of the Commiſſion Sewers; and certainly ſo they are all them, for the Country cannot want em: but we find them named over ain in the Commiſſion, or in the Sta-te that gives Authority to the Com-iſſion, and therein ranked and ſorted nongſt ſuch things as be *ad Nocumen-m*, and may be miſchievous, and in at ſenſe ſpeak we of them now, but ry briefly.

1. Firſt, Bridges. And I do take it, *Bridges.* ey may be Annoyances in reſpect of e undue contrivance of them; for in ſe you ſhall find any Bridges 1. ſo rait, that they hinder and check the urrent of the Waters; 2. or ſo Nar-w, 3. or ſo Low, that they 1. hin-r Navigation, or 2. make it danger-s, you are to make Preſentment of em, that they may be reformed and rrected: No reaſon you ſhould make e Paſſage more, or more eaſie by and, to make a Water-paſſage leſs, or ſs ſafe.

2. Secondly,

Streams. 2. Secondly, Streams. Theſe we fin
likewiſe mentioned over again among
thoſe things that are to be reformed; an
ſurely ſo they ought, in caſe you find a
ny made of new, that 1. either dive
the Waters, to the deſtruction of Na
vigation; 2. or ſurcharge the Rivers, t
the endangering of the Country.

Goats. 3. Thirdly, Goats. And theſe ar
the laſt of thoſe things we find named
ver again in the Commiſſion, that ma
be *ad Nocumentum*. Miſchief enoug
may be done by them, 1. in dry yea
the Rivers deſtroyed, 2. in wet yea
the Towns. --- The Goats within th
Defence of the Commiſſion, 1. a
Goats of general uſe for Drayning, an
let the Water out whither it ſhoul
2. There are Goats, moſt of them f
private mens benefit only, and take th
Water out, and carry the Water, fro
whence, and whither it ſhould not
And truly *Gentlemen*, I do not kno
any one thing of general or particul
uſe in this Country, more of late abuſe
than theſe Goats or Tunnells have bee
in open Defiance as it were of the Com
miſſion of Sewers it ſelf, by a ſort

People

eople, that more esteem the steeping
f a Gleam of Hemp, than the 1. neces-
ry supply, or 2. the general mischief
f a whole Town, or Country. There
not a Goat of them, 1. that were
aken up, to be laid down again, with-
ut expres order from the Court; 2.
Nor of them that were untaken up, to
un without License and Gage alotted
y two Commissioners; and therefore,
n your Enquiry take special notice of
ll such as have been Offenders in this
ind.

2. Secondly, Other Offences there
e in things of general abuse; such I
nean, as alwayes tend to some general
mischief, and cannot be in an ordinary
way allowable; and these you are to
Present, that without any more adoe,
hey may be restrained, or demolished;
nd they are 1. Locks, 2. Gores, and 3.
Ponds. *2. General Abuse, as,*

1. First, Locks. These I conceive
to be upon the Chanels of your Rivers,
or other Water-courses, and are Dams,
hrown in of Earth, or otherwise de-
vised of art; and these are full stops to
Navigation, and to Drayning, both to
the *Locks.*

the Passage of the Water, and to all Pas
sage by Water too, the one is locked up
the other is locked out.

Gores. 2. Secondly, Gores. These, ac
cording to the vulgar use of the word
I conceive to be upon the Banks o
your Rivers, or other Water-courses
and are nothing else but great Breache
or great Cuts, wilfully made there
Thus a whole River in a little time
dis-chanelled, and turned upon th
Country; and by such attempts as thes
are, you may soon have the Rivers dry
and the Country drowned: And thus
according to the vulgar acception of th
word, a Gore and a Gool seem to b
the same thing: But for my own part
I am rather of Opinion, that a Gor
and a Gorce are the same thing, an
that both of them are corruptions of th
Latine word, *Gurges*: Now this wor
Gurges, is used in the Commission o
Sewers, as it was at the Common Law
and a Man by the Law may have a righ
thereto, as appears by the Writ, *D*
Gurgite Habendo; and these *Gurgite*
were expresly under the Defence of tha
antient Commission: As also, I con
ceive

ive, they were within the Defence the Commission of Sewers in *Henry* e *6ths.* time, and seem therein to be nglished *Weares.* Certain it is, Places ey were in Drayns to take Fish in, d in Drayns might be tolerated; ough in the antient Statutes, for the eservation of the Rivers, such of em in Rivers as were disturbances to avigation, were ordered to be pul-d down. But I may have occasion at nother time to speak more fully to this urpose, and for the present shall take em in the vulgar sense, because I ould not disorder the Method I pro-eed in.

3. Thirdly, Ponds. These I con- *Ponds.*
eive to be Waters pent or bounded up n some Receptacle distant from the Ri-er, 1. where they are kept in, when ey might as well be Drayned out, and o mischief the Country; For, if I mi-ake not, Ponds, Lakes, Pools, and Receptacles of Water, as to matter of ewers, signifie all the same thing, and rational, or a gradual difference is all hat can be imagined amongst them. 2. Or else they are Waters drawn from the Rivers,

Rivers, and miſchief the Rivers: ſom
way or other, they are an Impediment
either 1. to Navigation, or elſe 2.
Drayning. Neither would I once hav
ſpoken of them, had they not been f
ſuch expreſly mentioned in the Co
miſſion. -- And becauſe ſome may agre
in Opinion with the Reader upon th
Statute of Sewers, and think theſe Pon
to be of ſmall & inconſiderable Miſchie
I ſhall only acquaint you with an Inqu
ſition of Sewers, taken at *Stamfor*
6to. *Edwardi* 6ti. wherein dive
Ponds, or Pools, nigh the River
Welland, and over againſt *Peakald*, an
Cowbitt, were as then Preſented, i
that the Owners and Farmers thereof
did by Trenches and Gutters, take ſuc
abundance of Waters into the ſai
Ponds, as 1. both deſtroyed the Rive
of *Welland*, and 2. drowned *Deepi*
Fen. And ſo I have done with a
ſuch Offences as be in things 1.
general uſe, or 2. general abuſe
mongſt us.

3. Particular Abuſe, from the

3. A third ſort of Offences you ar
to Preſent, that lye in things that are
particular abuſe, by ſome ſort of Men
tha

at are of ſome particular Dealing or
nployment only. -- Uſual it is in the
orld, every Man would manage his
n right to his greateſt advantage,
d ſo he may but get, he cares not 1.
o, nor 2. how many loſes by it; but
s ought not ſo to be. -- 1. No, not
wayes in things wherein a Man may
ve an Excluſive Property againſt all
hers; for even in ſome of them, *Sic*
ortet uti Suo, ut Alienum non Ledat,
Man ought ſo to make uſe of what is
s own, as not to damnifie his Neigh-
our. 2. But in ſuch things wherein a
an hath only a right at large with o-
ers, (though their rights be 1. in ſe-
eral reſpects, and may lye 2. in ſeve-
l prendures) there certainly 'tis not
the power of every one, or of any
ne, to exclude the reſt; who, though
another kind perhaps, yet have as
ood a right as the beſt. 3. Much leſs
ay any particular Man do it, *ad Pub-*
cum Nocumentum, to the general
Dammage of the whole Country, or of
e Common-wealth. -- And no leſs is
he Miſchief, if either Drayning, or
Navigation be hindred, for then *Rei-*

publicæ

publicæ Intereſt, ne quis re ſuâ, mal
utatur, the whole Common-wealth i
concerned in the wrong. And not onl
1. a general Good is to be preferred be
for a particular, but alſo 2. a genera
Miſchief alwayes to be heeded before
particular Good. -- Now two ſorts o
Men are dealing in the Waters, 1.
your Miller, and 2. your Fiſher; an
both of them more covetous of a parti-
cular benefit they get, than ſenſible o
any general harm they do there.

1. Miller, in his Mill, Mill-dam, and Flood-gates.

1. Firſt, The Miller, (the Water-Miller I mean) and he hath his 1. Mill, his 2. Mill-dam, and his 3. Flood gates, things obſtructive to 1. Navigation and to 2. Drayning, every one of them; and in caſe 1. new Ones be made where none was before, 2. or the antien Ones be enhaunſed and enlarged above what they were before, 1. ſuch Enhaunſements you are particularly to Preſent, and, by the Power of thi Commiſſion, they may be 1. abated 2. ſuch new-erected ones you are to Preſent, and, by the Power of thi Commiſſion, they may be 2. proſtrated and over-turned.

2. Secondly

2. Secondly, The Fiſher. And abundance of Devices he brings along with him, as 1. Fiſh-garthes, 2. Weares, 3. Hebbing-weares, 4. Keddles, and 5. Heckes, all of them Engines and Devices to catch Fiſh; and by ſtopping or ſtraitning of the Rivers, all of them Impediments to Navigation, and for ſuch particularly reckoned up in the Commiſſion; and in caſe any of theſe Weares 1. have not been warranted by ſufficient 1. Preſcription, or 2. Cuſtom, but 3. have been erected *de Novo*, 1. in, or 2. after the time of *Edward* the Firſt, without Authority of Parliament, they may be Preſented here, and demoliſhed. Or in caſe 2. ſuch as are warranted by ſufficient preſcription or authority, have any ways been inlarged and exalted above their antient Aſſizes, that inlargement ought particularly to be Preſented, 1. wherein, and 2. how much it is: and they ought to be corrected and reformed, that is, reduced to what they were, and *De jure* ought to be.

2. Fiſher, in his Fiſh-garthes, Weares, Hebbing-weares, Keddles, and Heckes.

And ſo I have done with all ſuch offences as are *Certi Nominis*, and particularly expreſſed in the Commiſſion:

All other Impediments, Lets, and Annoyances.

But beſides theſe, what offence ſoever ſhall be committed, that ſhall be, 1. either Obſtructive, 2. or Deſtructive; to, 1. Navigation, or, 2. Draining; doubtleſs you are to Enquire of it, and Preſent it. All which, that you either know, or can imagine: All of them, I ſay, are comprized in the Commiſſion under the general terms, of, 1. Impediments, 2. Lets, and 3. other Annoyances: So that what things ſoever, ſhall in any manner or kind whatſoever, 1. either impede and hinder, 2. or let and deſtroy, 1. Navigation, or 2. Draining, 3. or ſhall in reſpect of either of them, be, *Ad Nocumentum* that is, be real Annoyances, or general Miſchiefs, you are to make particular Preſentment of them, and we here to take order, that they be reformed and redreſſed. --- And ſo I have done with the ſecond part of my Diſcourſe. And have told you what you are to preſent; wherein, as to your Duty, I have endeavoured to expreſs my ſelf fully and plainly: And I have obſerved a Method upon the Commiſſion, as to that end only, which, I confeſs, may admit of ſome juſt exceptions: And up-

on occaſion hereafter, I may endeavour either to Clear, or Alter: However, I hope it may be excuſed, if it be conſidered, that I had not the leaſt *Veſtigium* of any man before, ſo as to Direct me, and to Follow him in it.

One thing more remains, and that is, How you are to Preſent: And truly, *Gentlemen*, I would have your Preſentments, both 1. Formal, 2. and Fair, 1. as to the ſubſtance or matter of them, Fair, and Juſt, and Juſtifiable, however; 2. and as for the Form of them, I ſhall blame no Man for queſtioning and inſiſting upon that too, as much as 1. the Nature of the Work, and 2. the End of the Commiſſion will permit. But I would have it well conſidered, that it is not in works of this nature as in particular Cauſes, which other where are between Perſon and Perſon only: In them diſpute matter of Form as long as you pleaſe, and if you miſs one way, to it again another, there is but one Perſon ſuffers by it all the while, and he may be relieved well enough at laſt too: -- But in works of this nature (in ſome of them at leaſt, nay, in moſt of them) the whole Country is concern-

3. *How to Preſent.*

Fair.

Formal.

ed; And I hold it no great diſcretion to diſpute the Formalities and Neceſſities of a Preſentment, while the whole Country may be drowned: for in ſuch a Caſe, who muſt make the Recompence? But to come home to the buſineſs, all that I have to ſay to you, is, that your Preſentments ought to be certain.

Certain in reſpect of Perſon.

1. Certain. Firſt, In reſpect of the Perſon, that it may be known who you Preſent. Perſons here in *England* have 1. Names, and Sir-names, diſtinguiſhing them from ſuch as be of other Names; and 2. they have places of abode, and other additions, diſtinguiſhing them from ſuch as be of the ſame Name; and as many of theſe are to be expreſſed, as may ſufficiently demonſtrate the Perſon you Preſent, that it may certainly be known who it is you mean.

Default.

2. Secondly, Your Preſentment ought to be certain, in reſpect of the 1. Default, or 2. Offence, that it may be known what you Preſent, and that ought to be as particular and certain as may be too, both in reſpect 1. of the thing, what: 2. the place, where

3. th

3. the manner, how: and 4. the quantity, how much is in Default: and in reſpect of Offences, 5. the time, alſo when, would be ſome wayes aſcertained too, though not ſo exactly as in ſome criminal Cauſes, the very day and hour; yet ſo, as in your ordinary Actions of Treſpaſs, ſo far I ſay at leaſt. -- And truly *Gentlemen*, nothing can carry the Form of a Preſentment, that hath not theſe two Certainties, and that in all the reſpects and degrees I have mentioned. Commendable, nay admirable hath been the diligence and care of former Ages in this kind, who have gone, not by gueſs, and at random, but 1. to the Perſons certainly, by their exact 1. Terrages, and 2. Aggiſtment Books: and 2. to the Default, by Admeaſurements, and have aſcertained a Preſentment to a Foot: thus it hath been; but how is it now? -- I have obſerved in ſome of your Preſentments, 1. That for the Perſons you would Preſent, not ſo much as their Names are to be found in them, they being no otherwiſe expreſſed than by ſuppoſition, as Owner of ſuch Lands, or Heir, or Aſſignee to one deceaſed, and theſe ſignifie juſt

no-body the Court can take notice of, without another Jury to enquire who they be. 2. In others of them, if you have Presented the Persons fully, yet they, upon perusal of your Verdict, could not certainly know for what: so that having 1. many Works of the same condition in several parcels, or 2. much Work contigiously adjacent in one, they could not certainly know what thereof to amend, so as to amend what was Presented; aud all this, because you have not ascertained the 1. Default, or if that, not 2. the just and proper Place of it. These are the common Imperfections and Uncertainties of most of your Presentments, and I tell you plainly of them, that no more such may be offered to the Court.

Annoyance. 3. Thirdly, Your Presentments ought to be certain in respect of the Annoyance or Mischief, whether it be so, in respect of 1. Drayning, or 2. Navigation, or 3. common Land-passage; and therein to express 1. wherein, and 2. how much the Country may be endammaged, or endangered, as to any, or all of them.

Charge. 4. Fourthly, and Lastly, Your Pre-

preſentments, in ſome particulat Caſes, ought to be certain too in reſpect of the Charge; and in them you ought particularly to expreſs what it is makes the Perſon you Preſent chargeable, that is, lyable to do the Work you Preſent him for: And this holds in all ſuch Perſons as are chargeable to any Works of Sewers, by Preſcription, Cuſtom, Tenure, or Covenant.

I have obſerved, that amongſt the Perſons chargeable to theſe Works of Sewers, 1. Some of them are more principally concerned in the Benefit, than in the Charge, much more by far, even almoſt beyond compariſon how much: And yet, I know not how it comes to paſs, but ſome of theſe, I think I may ſpeak it too truly, have not had ſufficient reſpect to the Commiſſioners, and their Proceedings, though all for their neceſſary Defence and Preſervation. 2. Others imagine themſelves to be equally, if not more concerned in the Charge, than in the Benefit: Such I mean, as have had ſhares of Land, or other Recompence, for doing of certain VVorks, and now would go away with the Profit of that, but would leave

both Charge and Danger too upon the Country, if they might: So that now it is come to that pass, that if you make not your Presentments certain, nay perfect and compleat in all punctilioes imaginable: though to your apprehensions they be never so slight and trivial, yet in VVorks of greatest Importance and Necessity, such as wherein the safety and defence of the whole Country may be concerned, nothing at all will be done by many Men, now a-dayes, unless it be by *Certiorari* to remove your Presentments, and then to find some fault or errour in them, and so to avoid them.

And truly *Gentlemen*, considering that your Presentments are the Basis and Foundation of the Commissioners proceedings, and that an Errour there is like a Foundation-Errour, no mending of it, but all must down for it; it concerns you, to be more careful in the Forming of them, than you have formerly been; you see other Men of late have been more industrious than formerly in the questioning of them.

For besides, that the uncertainty of your

your Presentments are 1. a Delay to the Execution of the Commission; they are also an 2, unhandsome Disparagement to the Court it self, to admit that here, which, upon Examination, will not hold good other-where. -- Therefore, I shall advise you, not to trust too much to your selves. and to your own plain meanings; No, nor to what I have told you neither; for I am not of that Profession to instruct you fully herein: And what I have spoken, I have spoken altogether under favour, and leave of such as are: And seeing things this way far out, I have rather told you, 1. how your Presentments should not be, in respect of their common and ordinary Imperfections, 2. than perfectly, how they should be: I shall therefore advise you, I say. to have recourse to the Clerk of Sewers, and to consult and advise with him about the Form of drawing your Presentments, 1. the Matter of them, that is, 1. What to Present, and 2. Who; God forbid, but that, in regard of the Oath you have taken, should be left 1. wholly, and 2. only to your selves. But as 2. for the Form of them, that is,

3. How

3. How to Present, what, and whom you think needful; in that, I say, the Clerk of Sewers may be helpful to you, and can be injurious to nobody.

And so I have given you a rude, and a slight draught of your whole Duty, 1. What you are to do, 2. and How, as to the substantial part of it: Some few Motives I would add to excite you to the doing of it.

Motives from

There are but three honourable Motives I know of, that fall directly under the notion, that your Moral Philosopher calls, *Bonum Honestum*, and they are 1. Prudence, 2. Justice, and 3. Religion; to these three all other Notions of this nature may easily be reduced. I am not ignorant, that some seem to make them inclusive one of another, and so perhaps would make but one of all three; and very true it is, that Religion is the highest part of Justice, and that Religion and Justice are two of the highest parts of Prudence: but as to my present purpose, I shall make three of them; and then 1. the first of Prudence, concerns you as Men, endowed with Reason, and differing from

om the Beasts: 2. the second of Ju-
ce, concerns you as Common-wealths-
en, living under Government, and
fering from people meerly bar-
rous: 3. the third of Religion, con-
rns you as Christians, living under a
hristian Government, and differing
om all other Nations and Men, that ei-
er are 1. of no Religion, or 2. of a false
ne. Three rational Motives they are,
above 1. the sordidness of Lucre, or
the brutishness of Pleasure. I will be
t short, but something I shall speak
om every one of them, taken strictly,
d in their proper Notions.

1. First then, From Prudence. In *Pru-*
se there was no Law to compel, yet, *dence.*
t of common Prudence, Works of
is nature (to say the least of them)
e not to be neglected. First, They
nrich your Country; Hence the usual
yle in such antient Inquisitions of
ewers as I have seen, in some is, *pro*
ommodo Patriæ: In others, *pro Utili-*
te, or *pro Ubertate Patriæ*: For the
ommon 1. Benefit, and 2. Fruitfull-
ess, or the 3. common Wealth of the
ountry. Nay, Secondly, more: They
reserve your Country: Hence the
antient

antient ſtyle of the Commiſſion it ſe
was, *pro Salvatione Patriæ, ad Prov*
dendum Salvationi Regni noſtri: So
literally expreſſed in the Form of t
Commiſſion, by the common Law: A
for the Safety and Preſervation of t
Common-wealth of *England*, the ve
words of the Commiſſion, by virtu
whereof we now ſit. -- You have thre
great Enemies, 1. the Sea on one ſid
2. the Fen waters on another, and
the Rivers in the midſt of you; whic
were they not, by the due and diligen
Execution of this Commiſſion, all kep
within their bounds, would ſoon ſwa
low you up, 1. Stock, 2. Men, 3. Cou
try, and 4. All.

Juſtice. 2. Secondly, From Juſtice. Firſt
Law it is: *Et Fiat quod Lex Jubet*
we all ſay: Lawes are therefore mad
that they may be executed. More, Se
condly, 'Tis *Lex Loci*, the grand an
peculiar Law of the Place, as I may ca
it; if other Countries may want it, w
in this cannot I am ſure. And Thirdly
'Tis *Lex Perſonarum* too. You of thes
Juries are now more immediately con
cerned in it, and more to look after it
than moſt other Men: The Com
miſſioner

ſſioners are now to View with your
es, and to receive Information from
our mouths, you are the Men that re-
eſent the ſeveral Wapontakes where-
you dwell; and 'tis now, in a ſpeci-
l manner, become your particular
uſt and duty, truly to inform the
ourt, what, by virtue of this Com-
iſſion, is 1. fit, or 2. needful to be
one there: and I hope you will be
areful that you do diſcharge it.

3. Thirdly, From Religion. And *Religion*
hat is an Oath you have here taken,
hat you will diſcharge it. Shall I tell
ou what an Oath is? 'Tis the very
rongeſt Bond in Religion, and ſome
y, Religion it ſelf hath its Name, *a*
Ligando, as being nothing elſe but a
ond to God-ward. -- Now an Oath is
o leſs than a Bond upon the Soul it ſelf,
Numb. 30. *V.* 3.) than an Obligation
pon your Conſciences, as you are
hriſtian Men. *Deum invoco Teſtem in*
Animam meam: I call God for a Record
upon my Soul, ſaith the bleſſed Apoſtle
(2. *Cor. C.* 1. *V.* 23.) And, *So help*
me God, and his holy Goſpells, that is,
So help me God in Chriſt, ſay every one
of you: You 1. conteſt God, you 2.

oppig-

oppignorate your Salvation? it may be both 1. a Soul-matter, and 2. a Salvation-matter, and therefore not lightly to be esteemed. 1. God, he is the God of Truth, and is there any of you dare deal falsely with him? and be 1. knowingly, yea 2. willfully, and 3. stubbornly Negligent? And 1. not endeavour, nay, which is worse, 2. obstinately, and 3. absolutely refuse to discharge your Duty (as some very lately here before you have done) wherein you are thus solemnly engaged? however, in truth, and according to the best of your skill. 2. God, he is the God of Righteousness, and is there any of you, in an unjust way, for 1. Malice, or 2. Favour, or 3. Fear, or 4. Corruption, 1. dare not to do what you ought, or 2. dare to do what you ought not? If you dare, let me tell you, 3. God, he is the God of Vengeance too. *Et qui fecit Testem cavet vindicem*: He that hath made God a Witness, let him take heed he make him not a Revenger too; for he will not be a Witness in vain: neither will he suffer any of you, or us, no, not the best of us all, to take his Name in vain:

vain: -- But Notions of this kind you ought to hear from another place, and therefore here I forbear them; only give me leave to tell you, That an Oath is a thing so Sacred, that the very Whore in the *Comedian*, she is at her *Aliud si scirem Sanctius*: There was nothing in the World she knew of greater Religion, or Obligation. And 'tis a sad complaint, in this later Age of the VVorld, against Christian Perjury: *Christianus Fecit, nil Mirum, nec Novum*: That we Christians should make no more account of it; the very *Turks* upbraid us with it.

So *Gentlemen*, to conclude, here is a the three-fold Obligation upon you in this business; 1. the first, a Rational Obligation from Prudence: 2. the second, a Civil Obligation from Justice: 3. and the third, a Sacred Obligation from Religion: Let some of these, or all of them at least, make you both 1. careful, and 2. conscientious to discharge it. And so I trouble you no further with words, but leave you to your VVork.

DIXI.

A Charge of Sewers: 1. As to *Lovells* Works, 2. And the Charge of them: Occaſioned upon his Aſſignes being Outed in *Deeping* Fen; and the Reentry of the Owners and Commoners there, *Anno Domini*, 1657.

Gentlemen, You of this Jury,

TO give you ſome account upon what buſineſs you are called hither: It cannot be unknown to you, that one *Thomas Lovell* Eſquire, ſome years heretofore, by virtue of certain Lawes of Sewers, and of an Act of Parliament, became an Undertaker for the Drayning of two great VVaſts in this County:-- The one of them called *Deeping* Fen, underſtanding by that name, as I ſhall do throughout my whole Diſcourſe, and as I have VVarrant for it from a Law of Sewers made

o that purpose, all the Fens in that Continent, between the two Rivers of *Welland* and *Glean*. -- The other *Thurlby* Fen, and *Burne* South-Fen. Some of you seem to be of those years, that I question not, but you did personally know the Man himself; and might also know both 1. the Condition of the said Fens, and 2. the Charge of all Works of Sewers relating thereto, before *Lovells* intermedling.

Lovells *Undertaking a great Work, in respect of,* 1. *The Persons Interessed.*

This Undertaking of his, I may well call a great Work, if meer Undertakings make one: 1. Great, First. In respect of the Persons Interessed: For in the said Wasts, besides *Cowbitt*, and *Caswick*, and the odd Houses in *Gretford*, and *Tofte*; no fewer than twenty Towns in the parts of *Kesteven* and *Holland*, have right of Common: three whereof are Market-Towns, and they of as good trading and traffique as most generally in the County. 2. Great, Secondly, In respect of the End Intended, which was the great Benefit and Profit, that upon the Draining of the said Wasts was to ensue; not only to the Commoners, and other persons, Owners therein; but also to the Com-

2. *The End Intended: not in respect of,*

mon-

mon-wealth, and Realm of *England* it self. -- And I would I could add, that it had been great, Thirdly, In respect of the End Executed too, that is, a great Work in the Performance, or a great Work perfected: but this being wanting, I may with much truth, and propriety of language say, it hath proved no Work at all. This great defailance is the cause of this present Meeting, and is the occasion of your present Enquiry: -- For your better direction wherein, I shall propound three things: First, What the Covenants or Contract on the part of *Lovell* was. Secondly, *Lovell* for the present being legally Outed from his third part in those Fens, or in most of them, what now is to be done, as to the Works he hath left. And Thirdly, Where, and how they are to be charged. 3. *The End Obtained.*

Touching the First, the Covenants upon which *Lovells* Undertaking was grounded, may be reduced to two Heads: First, What he was to Do, Secondly, What he was to Have. 1. *Lovells Undertaking.*

As to the First, what he was to Do: the principal Works, omitting those of less concernment, as being not much material 1. *Lovells Works.*

material to our purpose, were these.

The Drayning, and keeping dry the Fens.

1. First, 1. The Drayning of the said Fens, and 2. the continuing of the same for ever, firm, dry, and depasturable Grounds for Cattel at all times of the year: a commendable Work doubtless, had he performed it. Antiquity hath made famous mention, and hath given famous testimony to Works of this nature: the very designation of them is recorded by *Suetonius*, to the fame and honour of that great Emperour *Julius Cæsar*: and that, *inter Majora opera*, amongst those renowned and Imperial Works, or Designes of his, such as, to follow the expression of that Author, were *de ornandâ Instruendâq; urbe, de Tuendo Ampliandoq; Imperio*: For the Magnificence, and the Enlargement of the City and Empire, this very Work, *Pomptinas paludis siccare*, is reckoned for one. The like testimony was once to have been found in *Livy*, and the Drayning of those very Fens was recorded by him amongst the Consular Works of *Cornelius Cethegus*, the only Work that made his Consulship famous: And lest after Ages should altogether know

know nothing of it, *Florus*, who reduced the Books of *Livy* into an Epitome, and contracted that larger Book of his, wherein mention was made, amongst other things, of this particular Work, into Nineteen Lines; yet even amongst them affords room for this Expression, in honour both of the Consul, and of his Work: *Pomptina paludes à Cornelio Cethego Consule, cui ea Provincia evenerat, Siccatæ: Agerq; ex iis Factus.* Such a worthy Work was it, in the esteem of Antiquity, of Fens to make Fields. But to digress no further, but to come home to *Lovell*, and the Works he was to do, amongst these was,

The Maintaining the Fen-Banks.

2. Secondly, The repairing, maintaining, and keeping for ever, the Banks encompassing the said Fens; which Banks, to avoid all future Ambiguities and Scruples, are named in the said Lawes, and therein particularly expressed: 1. Some whereof are for the Preservation of the said Fens from the Rivers, 2. Others of them are for the Preservation of some of the Towns concerned in the Undertaking, from the said Fens.

The Rivers of VVelland *and* Glean.

3. Thirdly, The maintaining and keeping the two Rivers of *Welland* and *Glean* for ever, with sufficient Diking, Roading, and Scouring: That is, the River of *Welland*, so far as the County of *Lincoln* is charged therewith, from the beginning of *Deeping* Bank at the Barr: And the River of *Glean*, from *Baston* Spout, unto their Out-fall into the Sea, at or near the place where both the said Rivers do meet.

All Fen-Draynes

4. Fourthly, The maintaining and keeping sufficiently Diked, Cleansed, and Scoured for ever, all manner of Draynes, Sewers, and Passages for the VVater, and all other VVater-works, 1. which at the making of the said Laws were in use for the Drayning of the said Fens, and should be to that use, 1. continued, or 2. enlarged by the said *Lovell*: As also 2. all such other Draynes, as should by the said *Lovell*, or his Assignes, be devised, and made of new, at their discretions, for that use and purpose. These four, I conceive, are the material Points of *Lovell*'s Charge, what he was to do. And to prevent any weakness or mistaking of mine own, I have pursued the very

Letter

Letter of the ſaid Lawes, and have given them to you in Charge here, as I find them there.

As to the Second, What *Lovell* was to have: 'twas a full third part of all the ſaid Fens, amounting to 10885 Acres, as I account them: A Recompence as great, and as full, as any Undertaker whatſoever in theſe parts, originally, and upon the firſt Onſet, either had, or deſired. Look into the preſent Levell of the Earl of *Bedford*! Or into that ſometime the Earl of *Lindſeyes*: Or into that heretofore of Sr. *Anthony Thomas*, and you ſhall find none of them had more than a third Foot, ſome of them not ſo much. And this third part he was to have in Fee-ſimple, to him, his Heirs, and Aſſignes for ever. Subject, Firſt, To a Condition of Re-entry, on the behalf of the Owners and Commoners, upon ſuch 1. Default, and 2. Certificate: 1. in ſuch manner, and 2. during ſuch time, as in the ſaid Lawes is expreſſed. And Secondly, Subject to a Charge of all manner of Banks, Sewers, Rivers, Goats, Sluces, Draynes, and other Works whatſoever, for the Inning,

2. Lovells *Recompence a third part of the Fens.* *Held ſubject*

To a Conditi-on of Re-entry.

To a Charge of Works.

Drayning, or keeping dry of the said Fens.

And *Gentlemen*, This is all I have to say to you, concerning *Lovell*, and his Undertaking: both 1. as to his Works, what he was to do: and 2. as to his Recompence, what he was to have: which if any here shall think Extravagant or Impertinent, and not pursuant to the present business, I shall crave his pardon: For my own part, I did not know how to fall upon the following parts of my Discourse, without speaking this, as a Foundation to it: nor how to break into them, with that clearness and fullness I desire, without relating it.

2. *The Jury to Present.*

And so I come to the second part of my Discourse; *Lovell* for the present being Outed from his third part in these Fens, or in most of them, (the Commoners having lately made such a legal Re-entry upon them, and in such manner, as by the said Lawes is directed) what now is to be done as to the Works he hath left.

And truly *Gentlemen*, To deal plainly with you, I must, in the first place, confess my self not to be of that Profession, or Ability, as to give you sufficient

ficient Inſtruction herein: only ſomewhat I would ſpeak, out of a deſire I have to give you ſome Light in the buſineſs: and that not only 1. with ſubmiſſion to all preſent on the Bench, in caſe of a better Judgement: but alſo with a 2. deſire, they would be pleaſed, to obſerve and correct my miſtakings. For my own part, (I ſpeak it clearly) I am neither ſo contentious, nor conceitedly ambitious, as to have any Errour of mine maintained, and thereby to lead you into a worſe; and it may be ſuch a one as may be deſtructive to the whole buſineſs you are now about: But to goe forward.

To ſpeak your buſineſs in few words: It is to Enquire, and to Preſent in particular, Furſt, All ſuch Works as *Lovell*, or his Aſſignes, had in uſe, and were charged withall: 1. which either directly tended to the Drayning of the ſaid Fens, or 2. were put upon his Charge in order thereunto. And Secondly, What Defects in particular are in ſuch of the ſame, as are 1. fit, and 2. neceſſary to be continued. -- For I obſerve to you, and you are to take ſpecial notice of it, that the Works in the

1. *What Works* Lovell *had in Charge.*

2. *what Defects are in ſuch of them, as are to be continued.*

Drayning, or keeping dry of the said Fens.

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And truly *Gentlemen*, To deal plainly with you, I must, in the first place, confess my self not to be of that Profession, or Ability, as to give you sufficient

ficient Instruction herein: only somewhat I would speak, out of a desire I have to give you some Light in the business: and that not only 1. with submission to all present on the Bench, in case of a better Judgement: but also with a 2. desire, they would be pleased, to observe and correct my mistakings. For my own part, (I speak it clearly) I am neither so contentious, nor conceitedly ambitious, as to have any Errour of mine maintained, and thereby to lead you into a worse; and it may be such a one as may be destructive to the whole business you are now about: But to goe forward.

To speak your business in few words: 1. *What Works Lovell had in Charge.* It is to Enquire, and to Present in particular, First, All such Works as *Lovell*, or his Assignes, had in use, and were charged withall: 1. which either directly tended to the Drayning of the said Fens, or 2. were put upon his Charge in order thereunto. And Secondly, What Defects in particular are in such of the same, as are 1. fit, and 2. necessary to be continued. -- For I observe to you, and you are to take special notice of it, that the Works in 2. *what Defects are in such of them, as are to be continued.*

the

the Charge of *Lovell*, and his Assignes, are of several kinds.

Lovells *Works.*

1. *Some of his own devising: whereof,*

1. First, Some of them of antient charge and use. Secondly, Others of them are of *Lovells*, or his Assignes own devising, Works made by him, or them, *de Novo*, at their own pleasures and discretions: For *Lovell* had power to continue what antient Draynes he pleased; and also, at his will and pleasure, to make new Draynes, either 1. within the Fens, or 2. without towards the Sea, of what quantity, depth, or wideness, should in his own discretion be best, and of most advantage for the perfecting of the Work. Neither could this Power, in such manner as it was granted to *Lovell*, be any wayes 1. unreasonable, or 2. injurious. 1. Not unreasonable, because these Works were to be made at his only charge, and as for the success of them, that was likewise to be wholly upon his sole adventure and hazard. 2. Nor injurious, for none could ever have had just cause of complaint, -- in case 1. the work of Drayning had, according to the Covenants of his undertaking. been perfected in all the Fens: -- and 2. the particular

lar Provisions under which the said new VVorks and Draynes were to have been made, and to have run, or been made use of, had been observed: to wit, 1. that they run not above soyl, 2. or to the hurt of any person or persons, 3. or to the hurt or crossing of any other Drayn. But *Lovell* neither 1. perfecting the one, 2. nor observing these other, some of those Works that he had power to make, are now become, not only injurious, but altogether intolerable: For amongst these new Works of *Lovells* own devising,

1. First, Some of them are such, as Drayn one Fen, by turning the Waters thereof into the other, and there leaving them: These I know not well whether to call Works of Drayning, or Works of Drowning rather. I confess a new device it was of *Lovells*, by such Works as these, to Drown well nigh thirty thousands of Acres, for the Gaining or Drayning of three. And not to speak in the dark, but to give you a plain instance: In case *Thurlby* Tunnel shall, upon your Enquiry, appear to be a new VVork, devised by *Lovell* for the Drayning of that Fen; and shall appear

Some Drayn one Fen, by Drowning the other: and are not to be continued.

pear mischievous to the 1. making, or 2. increasing the surrounder of *Deeping* Fen, you are to give special notice of her in your Presentment: and therein to express, 1. *quo Jure*, that is, by what Law or Right she lyes: and 2. *ad quod Damnum*, to what Dammage or Mischief she runs. *Lovells* proper Work was to have Drayned these Fens: And I deny not, but that the manner of Drayning was wholly in his power and discretion: But this I say, *Lovell* had not power to Drown, or to increase and double the surrounder of Waters in any of them, and then to leave them, and to leave the mischief of such other VVaters upon them, as before never annoyed them. And give me leave, seeing it falls directly to my purpose, to observe to you the present condition of *Deeping* Fen.

On the one side of it, First, All the VVaters of *Thurlby*, and *Burne* Fen, and of that part of the Conntry descending into that Fen, are wholly issued into it. Secondly, The Overflowings of the River of *Glean*, and the whole mischief thereof, upon all Floods, and increase of VVaters, is wholly

wholly avoided upon it; and all this miſchief falls directly upon the ſaid Fen ſince *Lovells* time, and by new Works of his deviſing: ſuch as is, 1. the Tunnell aforeſaid, and 2. the Slakers on *Baſſon* Bank, and 3. the exalting the Banks for Defence on *Thurlby* and *Burne* ſide, much above their antient heighths: Works contrived on purpoſe for the 1. turning the Waters in hither, and the 2. taking them off from *Thurlby* and *Burne* Fen, which was formerly their antient Receptacle: and, upon that ſcore only, heretofore eſteemed one of the beſt Pike-Fens in the Country. -- On the other ſide of it, beſides the ſurrounder thereof by its own proper Waters; ſuch 1. as fall either immediately upon it, or 2. have their courſe into it, 3. to look upon the River of *Welland*, that great River, and well to conſider the great violence thereof: one half of whoſe ſtreams, not long ſince, had their paſſage to the Sea another way, through *Croyland*; and yet even then, a great part of its Over-flowings upon all Floods, received by *South-Ea* Lake, and otherwhere into the great Levell: Now I

ſay,

ſay, to conſider the ſaid great River, 1. banked out on all hands ſecurely from thence: 2. loſt below in its Out-fall to the Sea: and the violent ſtreams and rage thereof, 3. thruſt and ſtraitned into one Chanel above: and 4. turned wholly upon this one poor Fen: This I ſay, being well conſidered; and this being the preſent condition of this Fen, it concerns us all nearly, to look carefully to it, and to keep out all ſuch of theſe Waters, as legally may 1. either be kept out of it, 2. or kept off from it: otherwiſe the truth is, this Fen will not be long able to contain them, but muſt of neceſſity diſcharge them, to the unavoidable deſtruction of ſuch Towns as are ſeated below it towards the Sea.

And although I know many of an Opinion, that by the Commiſſion, ſuch Works of *Lovells* as theſe may be totally removed, and deſtroyed, *a Fundamento*: yet it is unqueſtionably certain, that the miſchief of them may, and ought to be totally removed: And to that purpoſe, 1. ſome of them may be abated, 2. others of them are to be ſtopt up, and made uſeleſs: if otherwiſe,

wiſe, they cannot be made harmleſs.
But beſides theſe,

2. Secondly, Other Works there are of *Lovells* deviling, that have no miſchief in them, but directly tend to the work of Drayning, as 1. either to fill, 2. or to ſome of the Fens by him undertaken; and theſe you are alſo to take notice of, and particularly to Preſent: 1. what they are, and 2. how neceſſary or uſeful they may be. And ſo much concerning thoſe Works that were wholly deviſed of new by *Lovell*, or by ſome of his Aſſignes; and 1. how far, and 2. to what purpoſe you are to take notice of them in your Enquiry and Preſentment. *Others tend directly to Drayning: and are to be continued.*

But, as I formerly told you, beſides thoſe Works of *Lovells* own deviſing, *de Novo*, there were others upon his Charge too, that were of antient charge and uſe: Such I mean, as were in charge upon the Country, and in uſe, 1. for the Drayning of the Fens, or 2. for the Preſerving of the Towns againſt them, time out of mind, before ever *Lovell* intermedled. Now theſe likewiſe will fall under a two-fold conſideration. 2. *Other Works of antient uſe; whereof,*

1. Firſt,

Some continued on, without Alteration.

1. First, Such as were time out of mind antient Draynes, or Banks, or other VVorks, continued on by *Lovell*, or his Assignes, in their antient way and course, without any 1. exalting, or 2. enlargement, or any other 3. change or alteration whatsoever, 4. or with such small or slight alteration, as in effect is to be esteemed none at all. And such as these you are to take special notice of in your Enquiry, and in your Verdict to Present them in particular, what they are, and to distinguish them from the rest.

Others continued on, with great Alterations and Enlargements.

2. Secondly, Such other antient VVorks as are continued on by *Lovell*, and his Assignes, but not in their antient way and proportion, but with much alteration, from what time out of mind, I may say, from what time within mind, they have been. Such Draynes I mean, as have for the greatest, or a great part of them, 1. been altered in their Chanels, and made of new: or if continued in their old Chanels, yet 2. therein much enlarged, beyond and above their former 1. Bredths, and 2. Depths. For *Lovell*, and his Assignes, had power, both 1. to continue such antient

Drayne

Draynes as he ſhould think fit, in their old and accuſtomed wideneſs and bredth: and alſo ſuch other as he ſhould think fit, 2. to enlarge at his and their own will and pleaſure. -- So *Gentlemen*, as I take it, this will be one conſiderable Point in your Charge: and in your Enquiry you are to take ſpecial and particular notice of all ſuch Draynes and VVorks ſo altered and enlarged: and in your Verdict particularly to expreſs, 1. wherein, and 2. how much that alteration is.

And ſo I have done with the ſecond part of my Diſcourſe, and have told you, 1. what now is to be done, as to the VVorks *Lovell* hath left; and 2. with what differences and diſtinguiſhments you are to obſerve them, and Preſent them. 1. Some of them, as I told you, are not to be continued, in ſuch uſe as at preſent is made of them at leaſt, as thoſe of his own deviſing, that are miſchievous; and of theſe you are to take no other notice in your Preſentment, but that 1. they, or 2. their miſchief however, may be removed. 2. All the other of them are to be continued, at leaſt not to be deſtroyed; and

under ſuch diſtinctions as I formerly obſerved them to you, you are to take notice of them, 1. in what condition they are, and 2. how uſeful they may be, and 3. to Preſent the defects there of, that where neceſſity is, they may be repaired and amended.

3. The Works to be charged, either upon

And ſo I come to the third part of my Diſcourſe, to tell you, how theſe VVorks are to be Charged, and who they be that ought to repair them; it would be otherwiſe to ſmall purpoſe to Preſent them.

In this caſe there are but three wayes imaginable, where the Charge of them ſhould at preſent either 1. reſt, or 2. be caſt; and that is, either, Firſt, Upon the antient Charge-bearers, and thoſe that are now in their Right, according to their former Allotments and Apportionments, before *Lovells* intermedling.

1. The antient Charge-bearers.

2. Or Lovell.

2. Or elſe, Secondly, Upon *Lovell*, his Heirs, or Aſſignes, in caſe he or they be bound thereto.

3. Or the Commoners in the Fens.

3. Or Thirdly, in the laſt place, To uſe the Authority of the preſent Commiſſion of Sewers, and to lay the Charge of them, 1. upon the whole Fens, and the Commoners therein, that receive the benefit of them,

2. or

2. or to aſſign and decree ſome reaſonable 1. part of the Fens, or the 2. profits of it, as to that purpoſe --And here give me leave to obſerve to you, that no new Charge is to be impoſed upon the Fens, or the Commoners, by virtue of the Commiſſion, (without the Owners and Commoners conſent thereto) but 1. where the antient Charge is 1. unknown, or 2. extinguiſhed: 2. and where *Lovell*, his Heirs, and Aſſignes, are 1. acquitted, or 2. are not in a condition or capacity, by the power of the Commiſſion, to be compelled. This way of Charge I mentioned to you in the laſt place, and it is only to be made uſe of in the laſt place, when all other wayes fail: and for 1. neceſſity, or 2. conveniency to ſupply their defects. And having obſerved this to you, I now proceed to declare unto you, with as much warineſs and cautiouſneſs as I can, where the Works, formerly in Charge of *Lovell*, according to the diſtinctions I obſerved amongſt them, are now to be charged.

1. And in the firſt place, we have already told you, that amongſt the Works of *Lovells* own deviſing, ſome

1. *Such Works of Lovells devising, as are not to be continued, are not to be charged.*

of them are not to be continued, by reason of their mischief; and therefore, as to these, you need not enquire who is chargeable: And of them I shall need say no more, but, that if any Persons of their own accord, would offer to bear the Charge of them, they are not to be admitted, because the Works themselves are not to be suffered.

2. *Such as are to be continued, are to be charged.*

2. Secondly, As to the rest of the Drayne and Works devised by *Lovell*, or his Assignes, that are of use and benefit, you are to consider well where to Charge them; for, without apparent mischief and danger to the Country, they can neither be 1. left, nor 2. lost. -- And as to these, I take it to be clear, that no antient Charge can be put upon them, because they themselves are not antient Works. They are Works, *de Novo*, of *Lovells* own devising, and could not be in Charge before they were in Being: 'Tis true, that some of them, if not all of them, do supply the use of such antient Works as by *Lovell* were deserted, and are now irrecoverably decayed and lost: But, as I take it, though *Lovell* might at his pleasure transfer the

But not by way of antient Charge: but upon

the Work; yet becauſe that was not the ſame Work, *in Individuo*, with the antient one, but another, and a new Work in lieu of it, he could not tranſferr the antient Charge, and affix that to a new Work of his own deviſing: but the antient Work being extinguiſhed and loſt, the antient Charge is extinguiſhed and loſt with it, and no Law I know of can remove it hither to theſe new ones. So then, the Charge of theſe VVorks muſt be put 1. either upon *Lovell*, his Heirs, or Aſſignes, that firſt deviſed them: 2. Or elſe upon the Fens, that receive the immediate and whole benefit of them.

Lovell: *Or*, *The Fens.*

3. Thirdly, As to thoſe other Draynes and VVorks that *Lovell* made not, but only made uſe of; VVorks of antient Charge, and continued on, but with great Alterations and Enlargements. As to theſe, I conceive, 1. If they ſhould be reduced to their antient Charge, that would be to little purpoſe, for that would not maintain them in their preſent Enlargements. 2. Or if the Draynes and VVorks themſelves ſhould be reduced to their antient Proportions, that would be of worſe conſequence;

3. *Works of* Lovells *enlarging, and their Enlargements to be charged:*

for as to moſt of them, they are in that manner contrived, and fitted to their preſent Chanels and Currents, that to reduce them now to what formerly they were, would be little leſs than to ſpoyl and deſtroy them. And I take it to be clear, 3. That the antient Charge cannot be enlarged in a proportion to the Enlargement of the VVorks; for the antient Charge, was a Charge fixed by the common Law, upon certain Perſons, by reaſon of their Tenure of certain Lands or Mannours, or for other certain conſideration: A known fixed Charge, and aſcertained, and not to be ſtretched no more than the Law it ſelf that fixed it. -- Now that *Lovell* might well charge himſelf, and his Heirs, and Aſſignes, as to theſe Enlargements, I hold it agreeable both to Law and Reaſon, becauſe they were VVorks done 1. by his own will, 2. and upon his own adventure: but that *Lovell* thereby, ſhould at his own pleaſure, and for his own advantage, increaſe the Charge of another, and lay a new Incumbrance upon another mans Lands and Eſtate, I, for my part, hold unreaſonable, and altogether improbable. --- So theſe VVorks

Not upon the antient Charge-bearers: but upon

Lovell: *Or,*

VVorks likewiſe, have none to maintain them, in the proportion they are now in, unleſs they, as to their particular Enlargements, may be charged 1. upon *Lovell*, his Heirs, and Aſſignes, that enlarged them: 2. or upon the Fens that ſhall receive profit thereby. *The Fens.*

4. But Fourthly, and in the laſt place: To come to ſuch antient VVorks as *Lovell* made uſe of in their antient way and courſe, 1. without any alteration at all, or 2. without any great one worth the taking notice of: And of theſe I cannot ſpeak my mind clearly to you, without diſtinguiſhing them, ſo as I may make an 1. Equitable difference amongſt them at leaſt, even as they ſtand in relation to *Lovell*, and his Aſſignes: and a 2. Legal difference amongſt them, as they ſtand in relation to the Fens, and the Commoners therein. *4. Works of antient Charge unaltered.*

1. Firſt then, Some of theſe are ſuch as *Lovell* charged himſelf withall, without any reaſon or conſideration more than his bare will and pleaſure: And thus the River of *Glean*, ſo far as the Town of *Surfleet* was antiently charged with the ſame, became *Lovells* *1. Such as Lovell had no conſideration for: upon Lovells neglect and abeyance,*

Charge and VVork: 'Tis true, they of *Surfleet* have *Lovells* Covenant for their discharge, but that is no absolute Discharge, but only a bare Covenant, such as it is, without Consideration too, to discharge, or save harmless; which if he do, it is well, and no more can be desired; but if he do not, they of *Surfleet*, as I take it, may be compelled by the Commissioners of Sewers, to do their work in their antient manner and charge: and they have their remedy over at Law against *Lovell*, for not performing his Covenant, where they may take it. -- However, this I think I may speak clearly to you, that although *Lovell* might charge the third part of these Fens, wherein they of *Surfleet* never had any interest, for the doing of this particular VVork of theirs, whilst the said third part was in his own possession and disposal: Yet, I take it, such Charge is now become void, or suspended at least, upon the Re-entry of the Commoners, and during their holding of it: *Lovell* could create a Charge therein no further than 1. as for his own Estate, and 2. whilst it was in his own hands: the Owners, and the Com-

Return to their antient Charge.

Lovell could not Charge the Fen-Lands with them longer than they were in his own hands.

Commoners, he could not, by any act of his, damnifie. -- So *Gentlemen*, You are to make ſpecial Preſentment of the River of *Glean*, and to expreſs how far they of *Surfleet* have been antiently, and of right chargeable with the ſame. And you are alſo to make Enquiry 1. into the antient Charge of ſo much of the ſaid River, and 2. into the preſent Defects thereof; and to make particular Preſentment of them, upon ſuch Perſons in particular, 1. inhabiting, or 2. holding any Lands or Manours in the ſaid Town, as of right ought to amend them.

2. Secondly, Other antient VVorks there are, that *Lovell* continued on, in their antient courſe, without alteration, and took upon his Charge upon reaſonable conſideration and recompence; 1. Such VVorks of this nature as you ſhall find, as I take it, the Charge of them, in the firſt place, even for the preſent, is to be laid upon *Lovell*, his Heirs, & Aſſignes, and not other-where, but upon their neglect and default. 2. And if the Charge of theſe 1. antient VVorks that were made before *Lovell's* time, then much more, and *à Fortiori*, the

2. Such antient works as Lovell *had Conſideration for, in the firſt place, are to be Charged upon his Heirs and Aſſignes.*

As also all such other Works, as were of Lovells 1. devising, or 2. enlarging.

the Charge of all such other VVorks also, as were of *Lovells* own 2. devising, 3. or enlarging: for they in a more peculiar manner relate unto him, and carry, as it should seem, his special mark and stamp upon them. -- And to clear this to you, as to all these very VVorks in particular, (all which, that they were expressedly in the Charge of *Lovell*, I declared unto you at large in the first part of my Discourse, wherein I told you, what *Lovell* was to do) as to all of them, I say, there is, by the Law, a double Charge upon *Lovell*.

A double Charge upon Lovell. 1. By way of Covenant.

1. First, A Charge upon *Lovell*, his Heirs, and Assignes, and every of them, by way of Covenant, at their own proper costs and charges, for all times for ever hereafter, to repair, maintain, and keep them; and thereof, (to bring it home to my present purpose) for ever to discharge, exonerate, acquit, or save harmless, as well the Queens Majesty that then was, her Heirs, and Successors, as all other Persons, their Heirs, and Assignes, of and for their repairing and amending their several parts or allotments of the same,

ſame. -- So *Gentlemen*, Take notice of it; here is an 1. abſolute Charge upon *Lovell*, his Heirs, and Aſſignes for ever: and 2. a Diſcharge, by way of Covenant, as to all other perſons. And a Covenant, we all know, is a good ground of Charge, in Caſes of Sewers; and is binding to the Heir, 1. in caſe caſe he be named therein, as in this he is: 2. and hath Aſſetts deſcended. So that in caſe you ſhall find *Lovell* to have an Heir, who holdeth Lands in deſcent from him; though the Lands lye out of the Country, and the View of the Commiſſion: yet the Heir, by reaſon of them, is chargeable to theſe very VVorks: I ſay not, that ſuch Lands are chargeable, but that ſuch Lands are Aſſetts in the hands of the Heir, making him chargeable.

2. Secondly, There is a Charge upon *Lovell*, his Heirs, and Aſſignes, by way of Tenure: he or they had certain Lands, that is, 1. the third part of theſe Fens, 2. or ſome of them being part of the ſaid undertaking, made, and to be held ſubject to this Charge, by the Act of Parliament thereupon. The continual maintaining of theſe VVorks; 2. *By way of Tenure.*

and

and thereby the keeping dry of these Fens, is the expressed Consideration *Lovell* had these Lands for: And, as I conceive, the Charge of these VVorks shall goe along with these Lands, and with every part of them, *in cujuscunq; manus devenerint*, be Owners of them who will, under *Lovells* title. -- So *Gentlemen*, I conceive it will be one very considerable Point in your Charge, to Present 1. how much of the said Lands is in the present possession of *Lovell*, his Heirs, or Assignes: 2. where the said Lands lye: 3. and who are the present Owners and Tenants thereof.

The Commoners Re-entry neither a Suspension nor Extinguishment of Lovells *Duty.*

As for the late Re-entry of the Owners and Commoners upon part of them, I for my own part conceive, that by the Intendment of these Lawes, such Re-entry was never condition'd for an acquittal on the behalf of *Lovell*: but was therein inserted altogether in favour, and for the benefit of the Commoners and Owners; and, as I take it, is nothing else but a meer penalty upon *Lovell* for his default; and during it, a suspension of his right: but is neither a suspension, nor extinguishment of his duty. So

So then, 1. *Lovells* Heirs are chargeable to these VVorks, but so far only as they have Assetts descended: 2. and *Lovells* Assignes are chargeable also, but so far only, and so long as they are Owners, *Et Dum Tenent Terras*, and are Terre-Tenants, and hold the Lands, or any of them, upon which this Charge is fixed. -- But put the case, 1. *Lovell* have no Heir with Assetts in his hands to charge him, 2. and that the Assignes of *Lovell* should be Outed the Fens, *in Toto*, and should stand at abeyance, that is, 1. neither do these VVorks themselves, nor 2. yet part with their right to these Lands, so as that others therewith may be procured to do them; nor so much as look after them, or us, but at their own time, and when they shall please. For certain it is, 1. a right of Re-entry they have upon us, when ever they shall do their Works: and 2. 'tis a very great question, whether we have any compulsory power at all upon them, during their dis-possession: or 3. that being Outed in part, should be Acquitted in part; and as to these particular Fens and Works; and should stand at like abeyance,

If Lovells Heirs be without Assetts, and his Assignes out of Possession, then in their neglect and abeyance,

1. *Antient Works unaltered will return to their antient Charge.*

ance, as to us, and them. -- In this case, when ever it shall be or happen, during the Acquital, or other Dismission, or Intermission of *Lovells* Assignes; and supposing the Inability, or Incapacity of his Heir: 1. These antient Works unaltered, will return to their antient Charge: And all the rest of the Works, such as were of *Lovells* own 2. devising, or 3. enlarging, as to their particular Enlargements only; and are so to be continued on by the Commissioners, for the common good, may by them, and by virtue of this their present Commission, be charged upon the Fens, and the Commoners that receive the immediate benefit of them. -- And in case of such Failer on the part of *Lovells* Heirs, and Assignes, can, according to what I have formerly told you, no where else be charged.

2. New Works are to be charged upon the Fens.

3. Antient Works altered and enlarged are to be charged, both upon the 1. antient Charge-Bearers, as to their antient Proportions: and 2. upon the Fens, as to their Enlargements.

And to avoid all difficulties, as to the defraying of the Charge of these Works wherein the Commoners in these Fens shall be any wayes concerned, I shall propound this to you, as a way of the greatest ease, and of the greatest equity: That the third part of these Fens, formerly held by *Lovell*, may still

still be held on in severalty: and that with the consent of the Owners and Commoners, the profits of it may be disposed of, for the discharge of them. And if they shall think good to desire it, a Decree of Sewers may be drawn up to that purpose.

Lovells third part still to be held in severalty; and with the Commoners consent, that way employed and decreed.

And thus far we have pursued *Lovell*, and his Works: But what if other Works, 1. that were never in the Charge of *Lovell*: 2. nor in the Charge of any other Person, appear to be of necessity, and of such great necessity, as that without them, the maintaining or perfecting these VVorks in the Charge of *Lovell* would be to little use or purpose: Such as I conceive, may be the opening of the Sands, and the making of a new Current or Chanell in the River of *Welland*, for some Miles together further towards the Sea than ever heretofore the said River was in charge. I shall leave the 1. Necessity of this VVork wholly to your considerations; and withall to consider well, and to inform the Court, 2. what is the true cause of the present decay or loss of the River of *Welland* in its antient Outfall; that in case of a new Charge, it

The Outfall of VVelland.

may

may be impoſed 1. upon them that occaſioned it, and 2. upon ſuch Lands as are gained by it.

All other Defaults and Offences.

And thus I have altogether done with the grand Buſineſs of your Charge and Enquiry. But beſides this, 1. what other Works of Sewers you ſhall find in Default, or 2. what Offences you ſhall find committed, contrary to the Laws of Sewers, 1. either upon your own View and Knowledge, 2. or upon ſufficient Information from others, in your Enquiry, you are to take ſpecial notice of them; And ſuch Works in Default, you are to Preſent 1. upon the Perſons that ought to repair them: and ſuch Offences you are to Preſent 2. upon the Perſons that committed them.

And now *Gentlemen*, I have ſpoken my mind to you 1. freely, and 2. plainly; And in any thing I have ſpoken wherein 1. you are not ſatisfied, you may conſult the Court: and in any thing wherein 2. the Court is not ſatisfied, I do humbly deſire it, they would be pleaſed better to inform you.

DIXI.

A Charge of Sewers: As to the Charge of the River of *Glean*, from *Newbury*, through the Town of *Surfleet*, to the Sea; 1. That it was the antient Charge of the Town of *Surfleet*: And 2. That during the Outer of *Lovell*, his Heirs, and Assignes, and their Failer and Neglect, they of *Surfleet* are for the present bound to Maintain it,

Gentlemen, You of this Jury,

YOU have heard a Petition, and the Order of the Court thereupon, read here; and they give you a short account upon what Business you are called hither: 'Tis to set out some 1. speedy, and 2. effectual Course, for the Ditching of the River of *Glean*, from a place called *Newbury*, through

the Town of *Surflet*, to its Outfall. This is the present work, both of us here, that be of the Court; and of you, that be of the Jury: And upon the whole matter, I shall propound three things to your Considerations: 1. The first shall be concerning the Necessity of the Work. 2. The second concerning the Persons upon whom the Work at present is to be Charged. 3. And the third concerning the Manner of that Charge.

1. *The Necessity of the Work.*

As to the First: Though the Petition in its own words be full, and requires no Commentator; yet out of it I shall instance in these particulars.

1. *'Tis for the Preservation of Navigation.*

1. First, 'Tis for the Preservation of Navigation: The loss of this 1. deprives many particular Men (that way bred and subsisting) of their Employments and Lively-hoods, 2. it deprives the Country it self of many rich Commodities and Advantages; and as to these parts, 3. it destroyes and blocks up that general Trade and Commerce they have formerly had by this River with the other parts of this Nation. So *Gentlemen*, You are to Enquire, 1. Whether Boats, Barges, and other Navigable

Navigable Veſſels, can have ſuch 1. full, and 2. clear Paſſage upon this River, as of right they ought, and have been accuſtomed to have: And if not, 2. You are to certifie the Court of it, and the Cauſe why they cannot have it. The Law of this Land is, and alwayes hath been very careful of Navigation, and will admit nothing that ſhall be to the 1. Deterioration, much leſs to the 2. Deſtruction of it. And the Preſervation thereof is one of the main Ends the Commiſſion of Sewers it ſelf was made for.

2. Secondly, 'Tis for the Preſervation of a very great and conſiderable part of the Country. This River is the only Outfall (that can lawfully be claimed) for the Drayning of the whole Townſhip of *Pinchbeck*, and for the Drayning of a great part of the Townſhip of *Spalding*; and upon the loſs of this River, would unavoidably follow the loſs and deſtruction of one of theſe Townſhips at the leaſt. But beſides theſe two, many other Towns, Fields, Meadows, and Fens, in the adjacent parts of *Keſteven*, have, of antient Right and Cuſtom, iſſued their Waters

2. *'Tis for the Preſervation of a great part of the Country.*

by this River, to the Sea; and they all, of neceſſity, muſt ſuſtain great and ineſtimable Dammages in the loſs of it: A loſs too great, not only to the particular Perſons having Intereſt; but alſo to the Body of the Common-wealth, in loſing ſuch a part of it ſelf; and no wayes by the Commiſsioners of Sewers to be ſuffered or endured. For, *Gentlemen*, I would have you take notice of it, that the Preſervation of Towns and Grounds, heretofore through politique wiſdom won, and made profitable for the benefit of the Common-wealth, is the chief thing within the charge and care of this Commiſsion.

The Sea-coaſts upon this Country (you all very well know) is a flat, and a looſe Sand; and would ſoon ſilt, and ſtop up the Outfalls of the whole Country, was it not for the Rivers, and the conſtant Streams of Water iſſuing down their Chanells. + And I obſerve, that it hath been the prudence and providence of our Predeceſſors, and ſuch others as have been employed for the Preſervation of this Country, to preſerve the Out-falls of the Rivers in their full deepneſs; and to lay what force of

Water

Water they could upon them, either by Fynnes, or such other Devices, for the scouring out of the Sand. -- Now this River of *Glean*, as to this very part of it from *Newbury*, that you now have in charge, 1. it being the Out-fall to the whole River, and 2. it being at present so greatly obstructed, that by reason thereof, this River cannot discharge its own Waters into the Sea: Look a little back upon the mischief of it: First, Those Waters rebound upon the Fens, and cause a great surrounder there; From whence, Secondly, Upon all winds and storms, they rage against the Defensive Banks of the Towns, and cause a daily danger and fear there. And Thirdly, They obstruct the Out-falls of all your other Draynes: -- So that for the present, what violence of Waters soever shall come upon the said Townships, either by downfall, or otherwise, (such is their sad condition) they must receive all of it in, and can issue little or none of it out. -- And thus this River of *Glean*, and that other of *Welland*, heretofore the two principal Ornaments of this Country, and the chief riches and

delights of the Towns through which they had their Currents, are now, 1. for want of maintainting, and 2. by reason of other abúsings, become the greatest Mischiefs: And those Towns, heretofore the principal in the Country, are now become little better than meer Ponds and Pools, nay very Seas, as in truth, whoever at present will look upon them, shall find them such.

3. 'Tis for the Preservation of many other Works of Sewers.

3. Thirdly, 'Tis for the Preservation of many very great and considerable VVorks of Sewers, lately repaired for the good of the Country: As 1. *Blew* Goat, 2. *Burtons* Goat, 3. the several Drayns leading to each of them; all which depend wholly upon the gaining of the Out-fall of this River; which if once effectually Ditched, these very VVorks would preserve: and if not, 1. the VVorks themselves will be altogether useless, and 2. great summs of Money expended about them, will be utterly lost.

And so I have done with the first part of my Discourse, and, I hope, have therein sufficiently intimated to you, the Necessity of the VVork, and that the Necessity of it is so great, that, with-

without unsufferable dammage and danger to the Country, it can admit of no delay. *In majoribus Causis, major adhibenda est Cura*: The greater import and necessity the busines is of, the greater also ought to be the care of such as are trusted in the management of it. The Commissioners you see have sufficiently testified theirs, 1. in giving it a particular Consideration, and 2. directing you, as a particular Jury for Enquiry in this mighty Business: And I doubt not, but that you will all of you endeavour to manifest your care and diligence in doing of your parts; as the Commissioners have in doing theirs.

And so I come to the second part of my discourse, to declare unto you, the Persons upon whom this VVork for the present is to be charged. 2. *The Persons Chargeable.*

Clear it is, that the Charge thereof for many years last past, ever since the 41*st.* and 42*d.* of Queen *Elizabeth*, by certain Lawes of Sewers then made: or at least ever since the First of King *James*, by Act of Parliament, in Confirmation of those Lawes, hath been upon *Lovell*, his Heirs, and Assignes; *The Charge upon* Lovell, *his Heirs, and Assignes, by Lawes of Sewers* 41. *and* 42. *Eliz. by Act of Parliament* 1. *Jacobi.*

The words are, That *Lovell*, his Heirs, and Assignes, at his and their own proper costs and Charges, (amongst many other things) shall also for ever maintain and keep the Rivers of *Glean* and *Welland* with sufficient Diking, Roading, and Scouring: to wit, (the River of *Welland*, as is therein expressed) and this of *Glean*, from a place called *Basson* Spout, unto its Out-fall into the Sea. (So that this part of *Glean*, from *Newbury*, through *Surfleet*, to its Out-fall, was undoubtedly included in *Lovells* Charge, and was a part of his VVork.) And also shall thereof discharge, exonerate, acquit, or save harmless, as well the Queens Majesty (that then was) her Heirs, and Successors, as all other person and persons, their Heirs, and Assignes, of and for the repairing and amending of their several Parts and Allotments in either of the said Rivers.

These words are all, that any person, formerly lyable to the maintaining of these Rivers, can allege, 1. either to charge *Lovell*, 2. or to discharge himself. -- And I shall consider how far these words may operate: First, As to the

the Charge upon *Lovell*, his Heirs, and Assignes. And Seconly, As to the discharge of such other Persons as were formerly lyable thereto.

1. For the First: As to the Charge imposed upon 1. *Lovell*, his 2. Heirs, and 3. Assignes, how far it shall extend upon them; that I may proceed therein with the greater clearness, I shall take them severally. And, 1. *How far the Charge imposed extends upon* 1. Lovell.

1. First, As to *Lovell*, the Person that bound himself to the doing of these Works, I take it to be a full Charge upon him, both as to his 1. Person, and 2. as to his Estate. -- But he many years since is dead and gone, and so 1. no help from him for the present at all, 2. much less any present and speedy help, such as the Necessity of this VVork requires.

2. Secondly, As to his Heirs, they being herein expresly mentioned, I take it to be a Charge to them likewise, so far as Heirs by the Law are chargeable; that is, 1. so long, and 2. so far as they have Assetts descended. The Lawes of this Nation (give me leave to speak it) are not so hard in this Point, as those sometimes of the Kingdom 2. *His Heirs.*

dom of *Israel*, where the Children might be made Bond-slaves to satisfie the Fathers Creditor: No, they burden not the Heir, where the Heir hath no benefit. And as to any Estate 1. of his own industrious Acquest, 2. or of Gift, 3. or Right from others; they burden not that neither: And 1. no farther, nor 2. no longer is the Heir lyable, than so far, and so long as he hath Assetts in descent. Now in case you make Enquiry after *Lovells* Heirs as to this particular, I doubt it will be to little purpose: *Lovell* confesseth himself to have spent his whole Estate in these Works, and very unlikely are his Heirs to hold Lands from him otherwhere, who never enjoyed from him one Foot of these in the Fens. So then, Enquire you 1. may, and 2. ought after them; but if no Assetts be in their hands, no Relief will be had from them in this business.

3. *His Assignes* 3. Thirdly, As to his Assignes, they are Persons, I confess, of great Estates, and Honour too; but I conceive, can *de Facto*, no longer be forced to the Charge of these Works, than *de Facto*, they are Terre-Tenants, and hold the Lands

Lands whereupon the Charge of them is fixed: So that for the present, they being Outed from the Benefit of the One, (the Commoners having lately made their Re-entry there) they cannot, during such Re-entry, and the Commoners holding, be compelled to the Charge of the Other. No Assignee is further chargeable by the Law, than he is Terre-Tenant: The Assignee of himself is no privy, but an extraneous Person: And present Possession, and an actual Estate, i. in these particular Lands, is it must make him lyable, as Assetts 2. in general do the Heir. -- But I would not herein be mistaken, for I take it, that *Lovells* Assignes have at present a Right in these Lands, though they have no Possession, and that in case they ever hereafter make use of this Right, they are the rightful Persons, that *de Jure*, ought to bear the Charge of these Works: And I could heartily wish it, that they would either undertake the One, or else wholly disclaim the Other. But this I say, that during their Outer from the Possession of these Lands, they are no wayes under the Power of the Commission, so as to be enforced to this Charge.

Charge: -- For their Right to these Lands, is no other, than what they may 1. waive, and 2. disclaim. And it is only a conditional Right, depending upon the performance of such Works as are altogether in their choice, either 1. to do, or 2. to desert: If they do Recover, they may Re-enter; and then all that can be said of them, is, that if they do Re-enter upon their former Estate, they must also Re-imburse, and Recompence what hath been done, and laid out by others in their Default.

But because some may imagine perhaps, that the Fen-Lands formerly in *Lovells* Possession, may be as yet lyable to the Charge of these Works. 4. I will therefore in the Fourth place, say something as to them. -- And I shall confess, that these Lands whilst they were in the Possession of 1. *Lovell*, 2. his Heirs, or 3. Assignes, were chargeable; and that by expres words in the Act of Parliament, he and they did hold the same subject to this Charge.

4. *The Fen-Lands.*

But these Lands being before *Lovells* intermedling, 1. clear, and un-lyable, and 2. such as wherein the Persons charge-

chargeable to this particular Work under your Enquiry never had any Intereſt; *Lovell* neither 1. did, nor 2. could create a Charge thereupon, further than 1. as to his own Eſtate, and 2. whilſt it was in his own Poſſeſsion: His own Eſtate therein make ſubject he 1. might, and 2. did; but the Owners, and the Commoners, and their Rights therein, (as I have formerly ſpoken it upon another occaſion from hence) he neither 1. did, nor 2. could, by any Act of his, damnifie. — And therefore, you may obſerve it, the words in the Act of Parliament are, That *Lovell*, his Heirs, and Aſsignes, ſhall hold the ſaid Lands ſubject to the Charge of theſe Works. Expreſly ſignifying, that the ſaid Lands were made ſubject to this Charge, whilſt they were in 1. his, or 2. their holding, and no longer.

And to clear this above all exception: Upon ſuch neglect and default of *Lovell*, his Heirs, and Aſſignes, as in the ſaid Lawes is expreſſed, and accordingly certified, the Owners and Commoners may Re-enter upon theſe Lands, and them have and hold: Now I ask, How?

The

The very words of the Law in this Point are clear and full; namely, as in their former Right, and as in their former Estate: But they, in their former Estate, were never chargeable to this Work; 'twas only *Lovell* undertook it: Nor now shall be upon their Re-entry, in case *Lovell* desert or neglect it: 'Twas *Lovells* Charge 1. originally, and 2. only; none of theirs.

But to put this Point a little higher: First, Suppose that *Lovells* Assignes 1. should wholly 1. waive their Right, and 2. desert these Works; and should never hereafter 1. Recover, or 2. Reenter: certainly in this case the Lords and Commoners of these Lands shall not be charged with other Works than of their own proper maintenance, and shall not at all be charged with foreign Works, that belong to other Towns, only because *Lovell* (who had sometimes an Estate under limitation in these Lands, and that subject to Forfeiture too) of his own accord undertook them. Or Secondly, Suppose *Lovells* Assignes, during this their Outer, 1. should wholly disclaim their Right, or 2. that their Right should other-wayes be

be dis-annulled; and a new Composition should by the Lords, Owners, and Commoners of these Lands, be made with a new Undertaker; doubtless they might do it with respect to their own Interest only, and are no wayes bound to treat Covenants therein, for the benefit of others, because *Lovell* admitted them.

And now *Gentlemen*, To make some short Recapitulation of what I have hitherto spoken to this Point: Clear it is, First, That the Fen-Lands sometimes *Lovells*, while they are in the Commoners Possession, are not lyable to this Charge. Clear it is, Secondly, That *Lovell* is dead and gone, and so no relief from him. Clear it is, Thirdly, That *Lovells* Heirs for want of Assetts are not in Law responsable. Clear it is, Fourthly, That *Lovells* Assignes are, during their Outer from the Possession of these Lands, not compellable. Now this Work being of such present and urgent Necessity, what further is to be done in it? and where is it for the present to be charged?

Doubtless such Persons as were formerly charged with this work before *Lovells* time, are now, during his neglect

lect and failer, to perform it: And there is the more Equity as to this particular Work; for that *Lovell* did freely, and of his own accord undertake this Work, without any Consideration whatsoever for it; and they upon whom this Work is chargeable, may in this respect only, well give *Lovell*, and his Asignes thanks, for freeing them so long from it for nothing. And for the better clearing of this, I shall, according to the Method I formerly propounded,

2. How far other Persons, formerly lyable, are discharged.

2. In the second place, declare unto you, How far this Charge upon *Lovell*, his Heirs, and Asignes, shall operate, as to the Discharge of the Persons formerly lyable: And I take it to be clear,

Not absolutely:

That, as to the Persons formerly lyable, there is 1. no absolute Discharge,

But, ex re Facta, if Lovell do the Works.

2. nor other Discharge at all, further than *Lovell*, his Heirs, and Asignes, *ex re Factâ*, by doing of the Work on their behalfs, shall make the Discharge; that is, (to speak plainly) there is to them no Discharge at all, only a Covenant to them there is, on *Lovells* part, that he will discharge them: There are

no

no such words, either in the Laws of Sewers, or in the Act of Parliament; nor no such sense can be put upon them, as that the Persons formerly lyable, shall be discharged the Works: but only, that *Lovell*, his Heirs, and Assignes, shall do the Works; and that *Lovell*, his Heirs, and Assignes shall them thereof discharge, acquit, exonerate, and save harmless: 1. which if he do, it is well; and it is his Covenant that he shall do it: 2. but if he do not, the Persons formerly lyable, may and ought, by the Court, upon his neglect and failer, be charged therewith; and they have their remedy other-where against *Lovell*, for not doing what he undertook to do. -- And I take this to be very clear, if ever the case be as now it is; that is, 1. if the Work be a Work of 1. antient, and 2. known Charge, as this is: and 2. if that *Lovell*, his Heirs, and Assignes, be none of them in a condition to be compelled thereunto; as we have formerly proved, that for the present they are not. -- For certain it is, the Commissioners must not neglect these Works, because *Lovell* neglects them; neither

Upon Lovells neglect and failer, they may again be charged with them.

must they suffer the Country to be lost and ruined for want of them, because *Lovell*, and his Heirs, are lost, and gone, and ruined in their Estates, and cannot do them; nor his Assignes compelled to do them.

So *Gentlemen*, Out of my Discourse hitherto, I hope I have sufficiently demonstrated three things to you: The first is, that this Work is of present necessity, and must be done. The second is, that *Lovell*, his Heirs, and Assignes, are none of them in a condition; so as *de Facto*, to be compelled to do it. The third is, that during this their Failer, the Work is to be done, and for the present is to be done by such Persons as were formerly chargeable thereto. Now that I may close up this second part of my Discourse: 4. A fourth thing remains for you to Enquire of, that is, Who these Persons are that were formerly chargeable? This indeed is properly your work, but I shall crave leave, out of the antient Records of this Court, to inform you something about it.

Who the Persons formerly lyable to this particular Work are.

I do find, by three antient Inquisitions, remaining here amongst the Records

cords of this Court: 1. the one without date, 2. the other *Nono Edwardi Secundi*, 3. the third *Quarto Henrici Quinti*, that the Charge of this River, from the beginning of *Surfleet*, (which hath been always accounted from *Newbury*) and so downwards to the Sea, 1. hath, and 2. ought to be born by the Town of *Surfleet*. These three antient Inquisitions, in express words, speak this Charge full and directly. 4. And the same Charge I find partly intimated likewise in a parcell of an old Inquisition, taken 17. *Edwardi 2di.* here also preserved. 5. The same Charge I find again full and direct, in an Inquisition, taken *6to. Edwardi 6ti.* 6. And Lastly, By Lawes and Orders of Sewers, *Octavo Elizabethæ*, (the very Age *Lovell* begun his Work in) I do find, that consentient and pursuant to all the former Inquisitions, the same in like manner was again charged and ordered upon the Lords, Owners, Free-holders, & Inhabitants of *Surfleet*, as hath been accustomed. And lest there should be any quarrel or question about the antient bound of the Sea, I do therein find the said River in express words (and I would have you

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The Town of Surfleet.

take ſpecial notice of them) charged upon them of *Surfleet*, from *Newbury*, through *Surfleet*: to the Out-fall of the Water of *Glean* into the River of *Welland*; nothing can be more full or plain. -- But becauſe I would clear my ſelf, ſo as to deal truly with you in this Point, and would not be ſuſpected of partiality, or intereſt, I ſhall deſire, that the Clerk of Sewers may read the Records themſelves to you, here in open Court; and you, upon his reading, may examine theſe Copies of them, for your uſe and direction.

Here the Clerk of Sewers read the Records, and the Foreman of the Jury examined the Copies of them then delivered.

So *Gentlemen*, I hope you are all fully ſatisfied, as to the antient Charge of this River, both 1. before, and 2. to *Lovells* time: You have had all the antient Records that I know preſerved in this Court, as concerning this particular, produced in the caſe; and they all ſufficientiy atteſt it, and they all agree in their teſtimony.

Let not the ſeveral and different Names of this River trouble you. -- Beſide

ſides ſuch Names 1. as it borroweth from the Towns through which it runs, as being ſometimes called *Pinchbeck* River, ſometimes *Surfleet* River, ſometimes *Baſſon* River, or *Baſſon-Ea*, two other famous names it hath, and as I have been informed, from two great Springs from whence it ariſeth; the one of *Burne*, from whence it is called *Burne-Ea*, and *Burne-old-Ea*: the other (which I ſhall no wayes affirm, but as I have been by ſome told ſo only) of *Glean*, from whence it is called the River of *Glean*. -- You ſee antient Inquiſitions have often the name of 1. *Baſſon-Ea*, a Town not far diſtant from us, nigh which it runneth; and of 2. *Burne-old-Ea*, as being the Spring nigheſt us in theſe parts, from whence a great branch of it ariſeth, and ſo to us beſt known: But in *Lovells* Law, it hath only the name of the 3. River of *Glean*, under which name accordingly we give it to you in Charge; and which Name, for that very cauſe, I would deſire you to uſe in your Verdict and Preſentment. But certain it is, call it the River of *Glean*, *Baſſon-Ea*, *Burne-Ea*, or what other Name you pleaſe, that from the

In-fall of *Burne* Water, (nigh the place where St. *Nicholas* his Crois, and Captain *Lovells* own House heretofore stood) and so downwards to the Sea, 'tis all but one and the same Chanell; so that this difference of Names need not trouble you; for as to this part of the River under your Enquiry, they are all of them but several Names of the same River, imposed in respect 1. of the several Fountains from whence it ariseth, or 2. in respect of the several Towns through which it passeth; and in some Records one Name is used, in some another. -- And having spoken this for the better understanding of the Records, I have altogether done with the second part of my Discourse, concerning the Persons upon whom this Work is to be charged.

3. *The Manner of the Charge.*

And so I come to the third part of my Discourse, concerning the manner of this Charge, to wit, How it is 1. to be Imposed, 2. and Born.

In the fore-going part of my Discourse, I have told you, that this River, from *Newbury*, to its Out-fall, is to be charged for the present upon the antient Charge-bearers: But so,

1. First,

1. First, As you lay no more but the antient Charge upon them; For in caſe *Lovell*, or his Aſsignes, have any wayes enlarged this River, they are not bound to maintain thoſe Enlargements, but only its antient Chanel; and to aſcertain this, you are to Enquire into the antient proportion of this River; and what was formerly, and before *Lovells* time, its antient depth and bredth: And to uſe few words, 'tis to be 1. ſix Foot deep at the leaſt, as appears by the Inquiſition 6. *Edwardi* 6*ti*. and to be 2. forty Foot wide, from *Cate-Bridge*, (a place near *Baſſon*) downwards to the Sea, if the old Banks will ſo permit; as appears by the Orders of Sewers 8. *Elizabethæ*: And in the antient Inquiſition 17. *Edwardi* 2*di*. a particular Reaſon is rendred, why it ſhould be of this wideneſs, from the Houſe as then of one *Richard Cheyle*, (probably ſtanding either 1. about, or 2. above *Newbury*) downwards: *Quiâ conveniens eſt, quòd curſus Aquæ in ſuo exitu ſit largior quam in ſuo introitu.*

1. *No more to be Impoſed, but the antient Charge of 6. Foot deep, 40. Foot wide, if the old Banks permit.*

2. And Secondly, The Owners and Inhabitants of the Town of *Surfleet*,

out of my precedent Discourse, sufficiently appear to have been the antient Charge-bearers, and upon whom the Work at present is to be charged: But the Records express no more, than in general words, 1. a Charge only upon the Town of *Surfleet*, or a Charge upon the Lords, Owners, Freeholders, or Inhabitants of *Surfleet*. Now I would have you Enquire into the antient Manner of that Charge, and how it was formerly born, whether 1. by Acridge, 2. or by Frontage, 3. or by Agistment, 4. or by common Men-Works; doubtless, by one, or some of these waves it was born: And you are to inform the Court, 1. by which, and 2. how much of the same; by any of which in particular: so that the same antient Charge may be imposed in the same manner it antiently was, and in no other. And so much concerning the grand Business of your Charge and Enquiry.

2. *The Manner how that Charge was born to be Enquired after, whether by* 1. *Acridge or* 2. *Frontage, or* 3. *Agistment, or* 4. *Commonage.*

Now if any of you ask, why no more of this River is put upon your Enquiry, than this part of it from *Newbury* to the Sea? I shall answer: First, That this

Why no more of this River, but this part of it only put upon Enquiry.

part

part is in the greatest Decay. Secondly, That this part being in Decay, is of the greatest Mischief, and is the sole cause of most of the Mischiefs aforesaid. And Thirdly, That this part of it must first be repaired, as being the Out-fall to the rest; here the Work must of necessity be begun: And when this shall be effected, I doubt not, but, as some recompence of your labours, you shall see *Glean*, with very small repairs above, 1. an useful, 2. a commodious, 3. and a pleasant River again.

And as it is your main Business to observe this River, and to Enquire into 1. the Defects of it, and 2. the Charge of it; so that 1. the Waters, 2. and Boats, may have a clear, and a free, and an interrupted Current and Passage in it again: So I would have you also take some notice of the great Bridge that is over it at *Surfleet*; to two ends would I have you observe this Bridge: First, To cause the Water to pass under it again, as antiently it hath done, and as of right it ought. And Secondly, To cause safe Land-Passage over it again; and to that end to take notice of the 1. Ruines, Surfleet *Bridge.*

Ruines, or 2. other Decayes thereof, and to Preſent them upon ſuch Perſons as ought to Repair them.

The particular Inconveniencies upon Holland, *and therein upon the two Towns of* Pinchbeck *and* Spalding.

I have obſerved, that in all great Works and Undertakings, both 1. the Contrivance of the Works themſelves, and 2. the Miſchiefs upon the Failer, have alwayes fallen heavy upon this Country of *Holland*; and in a ſpecial manner upon the two Towns of *Pinchbeck* and *Spalding*. I may truly ſay, we have alwayes been, *In Parte Deteriori*. 1. Whoſe Paſtures have been cut aſunder, mangled and ſpoyled, by the making of their Draynes, but ours? 2. Whoſe Grounds have been ſocked, by the running of their Draynes, but ours? 3. Whoſe Towns have been, yea at preſent are, over-flowed and drowned, by the breaking of their Banks, or by the miſcarriage of their other Works, but ours? And upon Failer, 1. they of *Keſteven* can ſuffer no more than in the loſs of their Commons; 2. 'tis we in *Holland* that do ſuffer in the loſs of our Towns: They may ſuffer in their Fens, 'tis we that ſuffer in our Eſtates and Habitations. -- So that both 1. the Work of Drayning, 2. and the Neglect of Drayning,

Drayning, though in different degrees, yet if in any thing, or any where miſchievous, 'tis ſo to us here in *Holland*: And if any where in *Holland*, 'tis ſo to theſe two Towns of *Spalding* and *Pinchbeck*: For beſides 1. the particular miſchief, which alwayes falls 1. firſt, and 2. heavieſt upon theſe two Towns; and is now fallen upon them; to the utter ruine and undoing of many particular Perſons and Families; and it may be, to the very deſertion and deſolation of the Towns themſelves; three Parts of one of them is at this very inſtant depopulate and forſaken; both 1. Man, and 2. Beaſt, are fled and gone. 2. They muſt, I ſay, beſides their ſuffering under it. be at all the Charge too for the remedy of it, or elſe it muſt reſt upon them. Other Towns as rightfully concerned in Works of Sewers, for the removing of it as they, without a compelling Power, will do juſt nothing.-- And doubtleſs, had other Towns (as rightfully concerned in the Charge as theſe) 1. born their equall ſhare to ſuch Works as have been done, 2. and had done ſuch other Works as they ought to have done, theſe Towns had not been ſuch a ſad ſpectacle

as

as now they are; nor in a ſuch a ſad, wofull, drowned condition, as now they are in.

To conclude: 1. The great Miſchief that now at preſent is upon theſe two Towns, and a great part of it 1. cauſed, or 2. continued at leaſt, by reaſon of this Obſtruction of the River of *Glean* in its Out-fall: 2. And the Perſons at whoſe Charge it ought for the preſent to be removed, you have heard declared unto you at large; 'tis now put upon your Enquiry, what you will find. I doubt not, but you will well conſider, 1. both the miſerable and calamitous Condition of theſe Towns, 2. and the urgent Neceſſity of the Work; and that you will Preſent it upon ſuch Perſons, 1. as may be compelled to do it, and 2. during the failer and neglect of *Lovell*, of right ought to do it: No more is required of you, and I hope you will do no leſs.

The Petition occaſioning the foregoing Charge of Sewers.

To the Right Worſhipful, the Commiſſioners of Sewers, for the County of Lincoln, *and therein for theſe parts of* Holland: *The humble Petition of the Surveighour, Dikereenes, and other the Inhabitants of the Town of* Pinchbeck, *in the County and Parts aforeſaid.*

SHEWETH,

THat whereas your Petitioners, and other the Inhabitants and Land-Owners within the Town of *Pinchbeck*, have for ſome years laſt paſt, been at extraordinary Charges and Expences, in and about the Repairing of a certain Sea-Goat, called *Blew*-Goat, and in Opening and Ditching divers Draynes, and other Works of Sewers, for the neceſſary Defence

Defence and Preſervation of the ſaid Towns: Yet ſo it is, 1. that all the ſaid Works are, and will continue uſeleſs; 2. and great ſumms of Money there-about expended, will be altogether loſt; 3. and your Petitioners, and their Eſtates, and the whole Townſhip of *Pinchbeck*, in daily danger of being deſtroyed and drowned; unleſs ſome ſpeedy courſe be taken for the Ditching of the River of *Glean*, from *Newbury*, through the Townſhip of *Surfleet*, to its Out-fall: for which whole ſpace, it being within the County of *Lincoln* aforeſaid, the ſaid main River is ſo landed and ſilted up, that 1. your Petitioners can have no Out-fall thereby for their Draynes and Waters into the Sea, 2. nor Boats, and Navigable Veſſels, their uſual paſſage thereupon, as of right they ought, and have been acuſtomed to have; to the great and ineſtimable Dammages 1. of your Petitioners, and 2. of the Common-wealth.

In Conſideration of the Premiſſes, your Petitioners humbly pray, That this Court would be pleaſed to ſet ſome 1. ſpeedy, and 2. effectual Order and Courſe,

Courſe, for the Ditching and Opening of ſo much of the ſaid River.

And foraſmuch as the Heirs and Aſſignes of *Lovell*, Perſons heretofore upon their Covenant lyable to the Ditching of the ſaid River, 1. have for many years laſt paſt refuſed, and neglected to perform the ſame: 2. and for the preſent have not any thing in Poſſeſſion, whereby they may be compelled thereunto: 3. and foraſmuch as the ſpeedy effecting of the ſaid Work is of great Import & Neceſſity: 4. and the Fen-Lands heretofore in the Poſſeſſion of *Lovell*, his Heirs, and Aſſignes, ſometimes lyable to the Charge thereof, are, ſince the Re-entry of the Commoners, and other Owners thereinto, become, and during their holding of them, ſtand diſcharged of *Lovell's* Covenant:

Your Petitioners further pray,

That 1. *during this Intermiſſion of* Lovell, *his Heirs, and Aſſignes*; *and* 2. *their Outer from the ſaid Lands*,

Lands, the Court would be pleased to settle the Charge of so much of the said River upon such Persons, as anciently, before Lovells *undertaking thereof, were, and of right are lyable thereto: And to that purpose would be pleased to cause a Jury to Enquire thereof, and to do all such other and further Acts as shall be conducing thereunto.*

And your Petitioners, as in Duty bound, shall Pray, *&c.*

FINIS.

CAMBRIDGE